



# **Delaware Compilation of School Discipline Laws and Regulations**

Prepared: June 30, 2022

## ***Introduction***

This compilation presents school discipline-related laws and regulations for U.S. states, U.S. territories, and the District of Columbia, and, where available, links to education agency websites or resources related to school discipline and student conduct. The discipline laws and regulations presented in this compilation have been categorized by type of specific discipline issue covered, according to an organizational framework developed by the National Center for Safe and Supportive Learning Environments (NCSSE). For example, one major category encompasses all laws or regulations governing states or territories that mandate specific disciplinary sanctions (such as suspension) for specific offenses (such as drug possession on school grounds). The school discipline laws and regulations were compiled through exhaustive searches of legislative websites that identified all laws and regulations relevant to each specific category. Compiled materials were subsequently reviewed by state education agency (SEA) representatives in the 50 states, Washington D.C., and the U.S. territories.

Discipline categories were not mutually exclusive. Laws and regulations often appeared across multiple categories. For jurisdictions with more extensive laws covering a breadth of topical areas, relevant sections were excerpted from the larger legislative text for inclusion in the appropriate discipline category. Laws, ordered by chapter and section number, appear first within each category followed by regulations. All laws and regulations listed within categories in the compilation also appear in the sources cited section of the document, which lists laws by chapter and section number and title, and where available, includes active hyperlinks to source websites supported or maintained by state legislatures. Additional links to government websites or resources are provided at the end of this document.

## ***Notes & Disclaimers***

To the best of the preparer's knowledge, this Compilation of School Discipline Laws and Regulations is complete and current as of June 2022. Readers should also note that the information in this document was compiled from individual sources that are created by each jurisdiction and which are maintained and updated with varying frequencies. Readers should consult the source information provided directly in order to check for updates to laws and regulations reported in this document or to conduct further research.

For further information, including definitions of the different policy categories, please refer to the [Discipline Laws and Regulations Compendium](#) posted on the Center's website.

*Prepared by:*



**National Center on Safe Supportive  
Learning Environments**

**Engagement • Safety • Environment**

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## ***Codes of Conduct***

### **Authority to Develop and Establish Codes of Conduct**

#### **LAWS**

##### **14 Del.C. §1049. Policy making.**

(a) The school board of each reorganized school district, subject to this title and in accordance with the policies, rules and regulations of the State, shall, in addition to other duties:

- (2) Determine the educational policies of the reorganized school district and prescribe rules and regulations for the conduct and management of the schools.

##### **14 Del.C. §4164. School bullying awareness and prevention; criminal youth gang detection.**

(b) Prohibition of bullying. -

- (1) Each school district and charter school shall prohibit bullying and reprisal, retaliation, or false accusation against a target, witness, or one with reliable information about an act of bullying.
- (2) Each school district and charter school shall establish a policy which, at a minimum, includes the following components:
  - a. A statement prohibiting bullying of any person on school property or at school functions or by use of data or computer software that is accessed through a computer, computer system, computer network, or other electronic technology of a school district or charter school from kindergarten through grade 12. For purposes of this section, "school property" and "school functions" mean as defined in § 4112 of this title.
  - b. A definition of bullying no less inclusive than that in § 4161 of this title.
  - c. Direction to develop a school-wide bullying prevention program.
  - d. A requirement that each school establish a site-based committee that is responsible for coordinating the school's bully prevention program including the design, approval, and monitoring of the program. A majority of the members of the site-based committee must be members of the school professional staff, of which a majority must be instructional staff. The committee also shall contain representatives of the administrative staff, support staff, student body (for a school enrolling students in grades 7 through 12), parents, and staff from the before- or after-school program or programs. These representatives shall be chosen by members of each respective group, except that the school principal shall appoint the representatives of the nonemployee groups. The committee shall operate on a 1-person, 1-vote principle. If a site-based school discipline committee has been established under § 1605(7)a. and b. of this title, that committee shall vote whether to accept the responsibilities of this paragraph (b)(2)d.
  - e. A requirement that any school district or charter school employee that has reliable information that would lead a reasonable person to suspect that a person is a target of bullying must immediately report it to the administration.
  - f. A requirement that each school have a procedure for the administration to promptly investigate in a timely manner and determine whether bullying has occurred, and that such procedure include investigation of such instances, including a determination of whether the target of the bullying was targeted or reports being targeted wholly or in part due to the target's race, age, marital status, creed, religion, color, sex, disability, sexual orientation, gender identity or expression, or national origin. This subsection does not preclude schools from identifying other reasons or criteria why a person is a target of bullying.

- g. A requirement that, to the extent that funding is available, each school develop a plan for a system of supervision in nonclassroom areas. The plan must provide for the review and exchange of information regarding nonclassroom areas.
- h. An identification of an appropriate range of consequences for bullying.
- i. A procedure for a student or parent to provide information on bullying activity. However, this paragraph does not permit formal disciplinary action solely based on an anonymous report.
- j. A requirement that a parent of any target of bullying or perpetrator of bullying be notified and provided with a form to be generated by the Department of Justice describing the role of the Department of Justice School Ombudsman and providing contact information. This form must also inform a parent of the parent's right to know when the bullying incident in question has been reported to the Department of Education under paragraph (b)(2)k. of this section.
- k. A requirement that all reported incidents of bullying, regardless of whether the school could substantiate the incident, be reported to the Department of Education within 5 working days under Department of Education regulations. The school shall notify a parent of all students involved in the reported incident when the report is made.
- l. A statement prohibiting retaliation following a report of bullying.
- m. A procedure for communication between school staff members and medical professionals who are involved in treating students for bullying issues.
- n. A requirement that the school bullying prevention program be implemented throughout the year, and integrated with the school's discipline policies and § 4112 of this title.

#### **14 Del.C. §9304. Enforcement by institution.**

(a) Anti-hazing policy. - Each institution shall adopt a written anti-hazing policy and, pursuant to that policy, shall adopt rules prohibiting students or other persons associated with any organization operating under the sanction of or recognized as an organization by the institution from engaging in any activity which can be described as hazing.

### **REGULATIONS**

#### **14 DE Admin. Code §603. Compliance with the Gun Free Schools Act.**

##### **1.0 Written Policy Required**

1.1 Each school district and charter school shall have a written policy implementing the Gun-Free Schools Act (20 U.S.C. § 7961) and complying with 11 Del.C. § 1457(j) or its successor statute. At a minimum, the policy must contain the following elements:

- 1.1.1 A student who is determined to have brought a firearm to school, or to have possessed a firearm at school, shall be expelled for not less than one year.
- 1.1.2 Modification to the expulsion requirement may be made on a case by case basis by the chief school officer. Any modification to the expulsion requirement must be made in writing to the Department.
- 1.1.3 The definition of "Firearm" shall be the same as the meaning given to the term in the federal Gun-Free Schools Act.

#### **14 DE Admin. Code §605. Student rights and responsibilities.**

##### **1.0 Required Policy**

All local school districts and charter schools shall have their own policies on student rights and responsibilities. These policies shall be based on the most current version or reauthorization of

Delaware Code, Delaware Administrative Code, federal legislation such as, but not limited to, Individuals with Disabilities Education Act (IDEA), Civil Rights Act, Elementary and Secondary Education Act (ESEA), Section 504 of the Rehabilitation Act, Americans with Disabilities Act (ADA), and the Patsy T. Mink Equal Opportunity in Education Act (Title IX).

#### **14 DE Admin. Code §612. Possession, use or distribution of drugs and alcohol.**

##### **1.0 Purpose**

The purpose of this regulation is to outline the minimum requirements to be included in all public school district and charter school policies on the Possession, Use, or Distribution of Drugs and Alcohol.

#### **14 DE Admin. Code §615. School attendance.**

##### **1.0 Required Attendance Policy**

Each school district and charter school shall have an attendance policy that complies with 14 Del.C. Ch. 27 and which defines and describes the district's or charter school's rules concerning attendance for students K to 12.

#### **14 DE Admin. Code §1150. School transportation.**

##### **9.0 Pupil Conduct on School Buses**

9.1 Districts and Charter Schools shall have a policy concerning the behavior of Pupils on school buses that shall, at a minimum, contain the following rules which if not followed may result in the suspension or denial of bus riding privileges:

9.1.18 Do not use tobacco or vaping products, use profanity, eat or drink on the bus.

9.1.21 Other forms of misconduct that shall not be tolerated on the bus and at bus stops are acts such as, but not limited to, bullying, indecent exposure, obscene gestures, spitting, and other actions that may be addressed in the District or school code of conduct.

## **Scope**

### **LAWS**

#### **11 Del.C. §1457. Possession of a weapon in a Safe School and Recreation Zone; class D, E, or F felony; class A or B misdemeanor.**

(j) The penalty for possession of a weapon in a Safe School and Recreation Zone shall be:

(5) In the event that an elementary or secondary school student possesses a firearm in a Safe School and Recreation Zone in addition to any other penalties contained in this section, the student shall be expelled by the local school board or charter school board of directors for a period of not less than 180 days unless otherwise provided for in federal or state law. The local school board or charter school board of directors may, on a case by case basis, modify the terms of the expulsion.

(6) In the event that an elementary or secondary school student possesses a deadly weapon other than a firearm in a Safe School and Recreation Zone in addition or as an alternative to any other penalties contained in this section, the student may be suspended for a period of not less than 30 days unless otherwise provided for in federal or state law. The local school board or charter school board of directors may, on a case by case basis, modify the terms of the suspension.

#### **14 Del.C. §4112. Reporting school crimes.**

(c) Student possession of weapons and unlawful drugs. - Whenever a school employee has reliable information that would lead a reasonable person to believe that a person on school property or at a

school function has on his or her person, concealed in that person's possessions, or placed elsewhere on school property:

- (1) Any controlled substance prohibited by Title 16; or
- (2) Any deadly weapon, destructive weapon, dangerous instrument or incendiary or explosive device as prohibited by Title 11, the school employee shall immediately report the incident to the principal, who shall conduct a thorough investigation. If the investigation verifies that good reason exists to believe that a crime has been committed, the principal shall immediately notify the appropriate police agency of the incident. If the police agency determines that probable cause exists to believe that a crime has been committed, then the principal shall file a written report of the incident with the Department of Education within 5 working days.

#### **14 Del.C. §4164. School bullying awareness and prevention; criminal youth gang detection.**

(b) Prohibition of bullying. -

- (1) Each school district and charter school shall prohibit bullying and reprisal, retaliation, or false accusation against a target, witness, or one with reliable information about an act of bullying.
- (2) Each school district and charter school shall establish a policy which, at a minimum, includes the following components:
  - a. A statement prohibiting bullying of any person on school property or at school functions or by use of data or computer software that is accessed through a computer, computer system, computer network, or other electronic technology of a school district or charter school from kindergarten through grade 12. For purposes of this section, "school property" and "school functions" mean as defined in § 4112 of this title.

### **REGULATIONS**

#### **14 DE Admin. Code §877. Tobacco and smoking policy.**

##### **3.0 Required Policy**

- 3.1 To improve the health of students, school personnel, and visitors, each school district and charter school in Delaware shall have a Tobacco and Smoking Policy which at a minimum:
  - 3.1.1 Prohibits smoking and the use of or distribution of tobacco products and electronic smoking devices in school buildings, on school grounds, in school leased or owned vehicles, even when they are not used for student purposes, and at all school affiliated functions.

## **Communication of Policy**

### **LAWS**

#### **14 Del.C. §701. Authority of teachers and administrators to control the disruptive behavior of students.**

- (g) Each local board of education shall establish, adopt, publish, and distribute to students in the district and their parents or guardians policy or standards that are consistent with the regulations developed under § 122(b)(26) of this title and include all of the following:
  - (1) Specify the general circumstances under which a student may be removed from a classroom or school-sponsored activity, consistent with a teacher's and administrator's ultimate authority to determine disruptive behavior and to remove a student from a classroom or school-sponsored activity.
  - (2) Provide an explanation or examples of "disruptive behavior" set forth in paragraph (a)(2) of this section.

#### **14 Del.C. §2724. Notification to parents and students.**

At the beginning of a school year each school district or public school shall notify each student and the parent of each student of the school attendance requirements of this Code, including the procedures and penalties applicable to truancy. The school district or school may determine the form of the notification.

#### **14 Del.C. §4131. Notification of provisions pertaining to school crimes.**

At the commencement of each school year, the school board of each school district shall ensure that each student enrolled in the district and the parent of each student shall receive notice of the following:

- (1) The provisions of § 621 of title 11 which prohibit making a false statement which causes evacuation of a school or other place of assembly and the penalties for such an offense;
- (2) The provisions of § 4110 of this title, which prohibit disturbing schools or destroying school property and the penalties for such offenses;
- (3) The provisions of § 4112 of this title, which require the reporting of school crimes.

As used in this section, "parent" means natural parent, adoptive parent, any person legally charged with the care or custody of a student under 18 years of age, or any person who has assumed responsibility for the care of a student under 18 years of age.

#### **14 Del.C. §4164. School bullying awareness and prevention; criminal youth gang detection.**

(c) Dissemination of policy and accountability. -

- (1) Each school district and charter school shall adopt the policy consistent with subsection (b) of this section and submit a copy to the Department of Education by January 1 of each year, or by January 1 of a newly approved charter school's first year of operation. For purposes of this paragraph, "submit" includes providing access to the policy via the school district's or charter school's website. Each school district and charter school shall submit a revised policy to the Department of Education within 30 calendar days of a school district's or charter school's revision. The Department of Education shall review a policy or a revised policy submitted under this paragraph for compliance with state and federal law.
- (2) Each school district and charter school shall include the policy adopted under subsection (b) of this section in the student and staff handbook. If no handbook is available, or if it is not practical to reprint new handbooks, each school district and charter school shall distribute a copy of the policy annually to all students, parents, faculty, and staff. Each school district and charter school shall provide the telephone number of the Department of Justice School Ombudsperson in writing to parents, students, faculty, and staff and provide the telephone number on the school district's or charter school's website and the website of each school in the school district. Each school district shall prominently display the telephone number of the Department of Justice School Ombudsperson in each school in the school district. Each charter school shall prominently display the telephone number of the Department of Justice School Ombudsperson in the school.

### **REGULATIONS**

#### **14 DE Admin. Code §605. Student rights and responsibilities.**

##### **2.0 Distribution of Student Rights and Responsibilities Policy**

- 2.1 Each local school district and charter school shall distribute and explain these policies to every student at the beginning of each school year.
- 2.2 Each district and charter school shall distribute and explain these policies to each student enrolling or re enrolling during the school year.

2.3 Each district and charter school shall post the policies on student rights and responsibilities on its website and notify a parent, guardian or Relative Caregiver of each student in writing where this policy(s) can be accessed. A hard copy shall be provided to a parent, guardian or Relative Caregiver upon request.

**14 DE Admin. Code §615. School attendance.**

**2.0 Distribution of Attendance Policy**

2.1 Each district or charter school shall distribute and explain these policies to every student at the beginning of each school year.

2.2 Each district or charter school shall distribute and explain these policies to each student enrolling or re enrolling during the school year.

2.3 Each district or charter school shall post the attendance policy on its website and notify a parent, guardian or relative caregiver of each student in writing where this policy can be accessed. A hard copy shall be provided to a parent, guardian or relative caregiver upon request.

**14 DE Admin. Code §624. School district/charter school policy prohibiting cyberbullying.**

**1.0 Cyberbullying Forbidden**

In addition to the policy prohibiting bullying put in place by school districts and charter schools pursuant to 14 Del.C. §§ 4161 and 4164, each school district and charter school shall also prohibit cyberbullying (as defined herein) by students directed at other students. Incidents of cyberbullying shall be treated by each school district and charter school in the same manner as incidents of bullying, and notice of each school district's and charter school's policy against cyberbullying shall be provided to students, staff, and faculty in the same manner as notice of the school district's and charter school's policy against bullying.

**14 DE Admin. Code §877. Tobacco and smoking policy.**

**3.0 Required Policy**

3.1 To improve the health of students, school personnel, and visitors, each school district and charter school in Delaware shall have a Tobacco and Smoking Policy which at a minimum:

3.1.2 Includes procedures for communicating the policy to students, school staff, parents, guardians or relative caregivers, families, visitors and the community at large.

## ***In-School Discipline***

### **Discipline Frameworks**

#### **LAWS**

No relevant laws found.

#### **REGULATIONS**

No relevant regulations found.

### **Teacher Authority to Remove Students From Classrooms**

#### **LAWS**

#### **14 Del.C. §701. Authority of teachers and administrators to control the disruptive behavior of students.**

(a) As used in this chapter:

(1) "Department" means the Department of Education.

(2) "Disruptive behavior" means conduct that is so unruly, disruptive, or abusive that it seriously interferes with a school teacher's or school administrator's ability to communicate with the students in a classroom, with a student's ability to learn, or with the operation of a school or a school-sponsored activity.

(3) "Racial subgroup" means the racial and ethnic subgroups of students as defined under the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 6301 et seq., as amended, which includes African American or Black, American Indian or Alaska Native, Asian American, Native Hawaiian or other Pacific Islander, Hispanic or Latino, White or Caucasian, and Multi-Racial.

(4) "School" means a traditional public school, vocational technical school, or charter school.

(5) "Subgroup" means as subgroup is defined under the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 6301 et seq., as amended, which includes racial subgroups, economically disadvantaged students, children with disabilities, and English learners.

(b) While a student is entrusted in their care or supervision, public school teachers, and administrators have the same authority to control the behavior of the student and to discipline or punish the student as a parent, custodian, guardian, or other person similarly responsible for the care and supervision of the student except as provided in §§ 702 and 4112F of this title. The authority includes removing a student from a classroom or school-sponsored activity.

(c) When a teacher removes a student from a classroom or school-sponsored activity in an effort to control the student's disruptive behavior, an on-site school administrator may, upon a written showing of good cause, override the teacher's decision to remove the student from the classroom or school-sponsored activity. Before overriding a teacher's decision, the administrator shall strongly presume that the teacher's decision to remove the student was reasonable and necessary under the circumstances.

(d) When a student is removed from a classroom or school-sponsored activity or is disciplined or punished pursuant to this section, the principal or the principal's designee shall afford the student appropriate due process as required by the federal and State constitutions.

(e) When a student is removed from a classroom or school-sponsored activity, the principal or the principal's designee and the removing teacher shall determine if and when a student may be readmitted

to the classroom or school-sponsored activity. If the teacher and principal or principal's designee cannot agree, the superintendent or the superintendent's designee shall make the determination.

(f) When a teacher or school administrator removes a student from a classroom or school-sponsored activity or disciplines or punishes a student, a rebuttable presumption exists that the teacher or administrator acted reasonably, in good faith, and in accordance with State or local board of education policy. The burden of overcoming the presumption shall be upon the student.

(g) Each local board of education shall establish, adopt, publish, and distribute to students in the district and their parents or guardians policy or standards that are consistent with the regulations developed under § 122(b)(26) of this title and include all of the following:

(1) Specify the general circumstances under which a student may be removed from a classroom or school-sponsored activity, consistent with a teacher's and administrator's ultimate authority to determine disruptive behavior and to remove a student from a classroom or school-sponsored activity.

(2) Provide an explanation or examples of "disruptive behavior" set forth in paragraph (a)(2) of this section.

(h) A district shall not establish or adopt a policy or standards that prohibit the removal of a student from a classroom or school-sponsored activity.

(i) No teacher who purports to have acted pursuant to the teacher's rights established by this chapter shall be found liable for civil damages arising from that action unless that teacher's conduct shocks the conscience.

## **REGULATIONS**

No relevant regulations found.

## **Alternatives to Suspension**

## **LAWS**

### **14 Del.C. §703. Student discipline report; school discipline improvement plan.**

(b) If a school is identified as meeting a threshold under paragraph (a)(4) of this section for 3 consecutive school years, the Department shall notify the school of this status by December 1 and the school must do all of the following:

(2) If a school has already implemented restorative justice practices, the school must review the interventions being used to assure research-based quality, scope of training provided, and follow-up support to assure proper implementation. Restorative justice practices program improvements should be made based on this review.

## **REGULATIONS**

No relevant regulations found.



## ***Conditions on Use of Certain Forms of Discipline***

### **Corporal Punishment**

#### **LAWS**

##### **14 Del.C. §702. Corporal punishment.**

(a) "Corporal punishment" means the intentional infliction of physical pain which is used as a means of discipline. "Corporal punishment" includes, but is not limited to, paddling and slapping, when used as a means of discipline.

(b) No public school teacher, administrator, official employee or agent of the School Board may subject a student enrolled in the school district to corporal punishment.

(c) Subsection (b) of this section does not prohibit a public school teacher, administrator, official employee or agent of a school board from:

- (1) Using reasonable and necessary force to quell a disturbance, including but not limited to a physical altercation, or prevent an act that threatens imminent bodily harm to any person;
- (2) Using reasonable and necessary force to obtain possession of a weapon, or other dangerous object within a student's control;
- (3) Using reasonable and necessary force for the purpose of self-defense or the defense of others under §§ 464 and 465 of Title 11;
- (4) Using reasonable and necessary force for the protection of property under § 466 of Title 11;
- (5) Using reasonable and necessary force to prevent a student from imminently inflicting bodily harm on that student's own self;
- (6) Using reasonable and necessary force to protect the bodily safety of others; or
- (7) Using incidental or minor physical contact necessary to maintain order and control.

(d) In determining whether or not a person was acting within the exceptions in subsection (c) of this section, deference shall be given to reasonable, good faith judgments made by the teacher, administrator, official employee or agent.

(e) Nothing in this section shall prohibit, permit or otherwise affect any action taken by the teacher, administrator, official employee or agent of the School Board with regard to a person who is not a student enrolled in the school district.

(f) For purposes of this section, the term "reasonable and necessary" shall be interpreted in conformity with applicable limitations established by § 4112F of this title.

#### **REGULATIONS**

No relevant regulations found.

### **Search and Seizure**

#### **LAWS**

##### **14 Del.C. §4119. Metal detectors.**

The school board of each school district shall have authority to employ the use of metal detectors, or any other similar security devices, to prevent pupils from bringing dangerous instruments, deadly weapons or

any other contraband into the schools. Any school board exercising its authority under this section shall promulgate rules and regulations governing the implementation and use of such security devices.

#### **14 Del.C. §4121. Video cameras on public school property.**

The school board of each school district shall have authority to establish and implement programs to use video cameras for surveillance on public school property, including, but not limited to, classrooms, halls, auditoriums, cafeterias, gymnasiums and parking areas, for the purpose of monitoring student behavior to help ensure the safety of students and teachers. However, no video camera shall be used for classroom surveillance, pursuant to this section, unless the principal of the school and the teacher of the classroom consent to the surveillance.

Before exercising its authority under this section, a school board shall promulgate rules and regulations governing the implementation and use of video cameras in classrooms. However, in no event shall video cameras be used at any time or at any location which would violate a student's reasonable expectation of privacy including, but not limited to, locker rooms, areas where students may disrobe and lavatories.

### **REGULATIONS**

#### **14 DE Admin. Code §612. Possession, use or distribution of drugs and alcohol.**

##### **3.0 General Provisions**

3.1 The following provisions shall apply to all public school district and charter schools:

3.1.2 Student lockers are the property of the school and may be subjected to search at any time with or without reasonable suspicion. [...]

##### **4.0 Requirement of Each School District and Charter School to have a Policy**

4.1 Each school district and charter school shall have a policy on file and update it periodically. The policy shall include, at a minimum, the following:

4.1.5 A written policy on search and seizure.

### **Restraint and Seclusion**

### **LAWS**

#### **11 Del.C. §468. Justification - Use of force by persons with special responsibility for care, discipline or safety of others.**

The use of force upon or toward the person of another is justifiable if it is reasonable and moderate and:

(2) The defendant is a teacher or a person otherwise entrusted with the care or supervision of a child for a special purpose, and:

a. The defendant believes the force used is necessary to further the special purpose, including the maintenance of reasonable discipline in a school, class or other group, and that the use of force is consistent with the welfare of the child.

#### **14 Del.C. §4112F. Limitations on use of seclusion and restraint.**

(a) Definitions. - The following words, terms, and phrases when used in this section, shall have the meaning ascribed to them except where the context clearly indicates a different meaning:

(1) "Chemical restraint" means a drug or medication used on a student to control behavior or restrict freedom of movement that is either not medically prescribed for the standard treatment of a student's medical or psychiatric condition or not administered as prescribed.

(2) "Mechanical restraint" means the application of any device or object that restricts a student's freedom of movement or normal access to a portion of the body that the student cannot easily remove. "Mechanical restraint" does not include devices or objects used by trained school personnel, or used by a student, for the specific and approved therapeutic or safety purposes for which they were designed and, if applicable, prescribed, including the following:

- a. Restraints for medical immobilization;
- b. Adaptive devices or mechanical supports used to allow greater freedom of movement stability than would be possible without use of such devices or mechanical supports;
- c. Vehicle safety restraints when used as intended during the transport of a student in a moving vehicle;
- d. Instruction and use of restraints as part of a criminal justice or other course; or
- e. Notwithstanding their design for other purposes, adaptive use of benign devices or objects, including mittens and caps, to deter self-injury.

(3) "Physical restraint" means a restriction imposed by a person that immobilizes or reduces the ability of a student to freely move arms, legs, body, or head. "Physical restraint" does not include physical contact that:

- a. Helps a student respond or complete a task;
- b. Is needed to administer an authorized health-related service or procedure; or
- c. Is needed to physically escort a student when the student does not resist or the student's resistance is minimal.

(4) "Public school personnel" means an employee or contractor of a public school district or charter school. "Public school personnel" does not include the following:

- a. A law-enforcement officer as defined in § 9200(b) of Title 11; or
- b. An employee or contractor providing educational services within a Department of Correction or Division of Youth Rehabilitative Services facility.

(5) "Seclusion" means the involuntary confinement of a student alone in a room, enclosure, or space that is either locked or, while unlocked, physically disallows egress. The use of a "timeout" procedure during which a staff member remains accessible to the student shall not be considered "seclusion."

(6) "Timeout" means a behavior management technique in which, to provide a student with the opportunity to reflect or regain self-control, a student is separated from others for a limited period in a setting that is not locked and the exit is not physically blocked by furniture, closed door held shut from outside, or other inanimate object.

(b) Prohibition and restriction on use. -

(1) Public school personnel are prohibited from imposing on any student the following:

- a. Chemical restraint; and
- b. Subject to waiver authorized pursuant to paragraph (c)(4) of this section, mechanical restraint and seclusion.

(2) Public school personnel may impose physical restraint only in conformity with all of the following standards:

- a. The student's behavior presents a significant and imminent risk of bodily harm to self or others;
- b. The physical restraint does not interfere with the student's ability to communicate in the student's primary language or mode of communication;
- c. The physical restraint does not interfere with the student's ability to breathe or place weight or pressure on the student's head, throat, or neck;

- d. The physical restraint does not recklessly exacerbate a medical or physical condition of the student;
- e. Less restrictive interventions have been ineffective in stopping the imminent risk of bodily harm to the student or others, except in case of a rare and clearly unavoidable emergency circumstance posing imminent risk of bodily harm, including, without limitation, intervening in a student initiated physical assault or altercation;
- f. For a student with a disability as defined in Chapter 31 of this title or 34 C.F.R. Part 104, the physical restraint does not contravene provisions in an individualized education program (IEP), behavior intervention plan, accommodation plan, or any other planning document for the individual student;
- g. Personnel use only the amount of force necessary to protect the student or others from the threatened harm;
- h. The physical restraint ends when a medical condition occurs putting the student at risk of harm or the student's behavior no longer presents an imminent risk of bodily harm to the student or others;
- i. The physical restraint is within the scope of force authorized by § 468 of Title 11; and
- j. The physical restraint conforms to applicable regulations promulgated by the Department of Education.

(c) Department of Education role; regulations. -

(1) The Department of Education shall promulgate regulations implementing this section. Such regulations shall include, but not be limited to, the following:

- a. Requirement of uniform public school data collection on each use of physical restraint, by school, which includes demographic information on affected students such as age, gender, race, ethnicity, and disability category, if any;
- b. Requirement of timely parental notice in event of use of physical restraint;
- c. Special procedures and safeguards applicable to use of physical restraint for students with disabilities as defined in Chapter 31 of this title or 34 C.F.R. Part 104; and
- d. Recommended or required training of public school personnel in implementing this section.

(2) To facilitate data collection and analysis, the Department of Education may adopt a uniform reporting document and may require reporting of data in a standardized electronic or nonelectronic format.

(3) The Department of Education shall issue an annual report on use of physical restraint which includes rates of usage by school and by subcategories identified in paragraph (c)(1)a. of this section, identifies trends, and analyzes significant results.

(4) Unless proscribed by federal law, the Secretary of Education may issue a waiver of the prohibition on mechanical restraint and seclusion for an individual student based on compelling justification and subject to specific conditions and safeguards which must include a requirement of continuous visual staff monitoring and parental notice of each use of mechanical restraint or seclusion.

**14 Del.C. §4140. Delaware school safety and security fund [Effective upon fulfillment of the contingency in 81 Del. Laws, c. 427, § 2].**

(b) The Department of Education shall administer the Delaware School Safety and Security fund to provide funding to school districts, vocational technical schools, or charter schools (LEAs) for certain expenses incurred on or after the effective date of this section for projects intended to improve school safety or security. The LEA, in conjunction with the Department of Education and Department of Safety and Homeland Security, shall determine which items to apply such funds to and the following expenses

for the purposes of this section shall be considered minor capital expenditures and shall be eligible for such funds:

(14) Restraint training.

## **REGULATIONS**

### **14 DE Admin. Code §610. Limitations on use of seclusion and restraint.**

#### **1.0 Purpose and Authority**

1.1 The purpose of these regulations is to establish standards and procedures for the use of physical restraint, chemical restraint, mechanical restraint, and seclusion to provide safety for all individuals. The regulations set forth permitted and prohibited uses of restraint and seclusion, required training for public school, private program, or alternative program personnel, required documentation and reporting of incidents of restraint and seclusion, required notification to parents, and waiver procedures for individual students.

1.2 These regulations are promulgated in accordance with 14 Del.C. § 4112F.

#### **2.0 Definitions**

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly indicates otherwise:

"Alternative program" means a program established pursuant to 14 Del.C. Ch. 16.

"Chemical restraint" means a drug or medication used on a student to control behavior or restrict freedom of movement that is either not medically prescribed for the standard treatment of a student's medical or psychiatric condition or not administered as prescribed. (Authority: 14 Del.C. § 4112F(a)(1)).

"Mechanical restraint" means the application of any device or object that restricts a student's freedom of movement or normal access to a portion of the body that the student cannot easily remove. "Mechanical restraint" does not include devices or objects used by trained school personnel, or used by a student, for the specific and approved therapeutic or safety purposes for which they were designed and, if applicable, prescribed, including the following:

- Restraints for medical immobilization;
- Adaptive devices or mechanical supports used to allow greater freedom of movement stability than would be possible without use of such devices or mechanical supports;
- Vehicle safety restraints when used as intended during the transport of a student in a moving vehicle;
- Instruction and use of restraints as part of a criminal justice or other course; or
- Notwithstanding their design for other purposes, adaptive use of benign devices or objects, including mittens and caps, to deter self-injury.

(Authority: 14 Del.C. § 4112F(a)(2))

"Parent" means:

- A biological or adoptive parent of a child;
- A guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State);
- An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives and for whom a Relative Caregiver's School Authorization executed in compliance with 14 Del.C. § 202(f)(1) is on file;
- An individual who is otherwise legally responsible for the child's welfare; or

-A surrogate parent who has been appointed in accordance with 14 DE Admin. Code 926,19.0 or Section 639(a)(5) of the Act.

The biological or adoptive parent, when attempting to act as the parent under these regulations, and when more than one party is qualified under this definition to act as a parent, must be presumed to be the parent for purposes of this definition unless the biological or adoptive parent does not have legal authority to make educational decisions for the child. If a judicial decree or order identifies a specific person or persons to act as the "parent" of a child, or to make educational decisions on behalf of a child, then such person or persons shall be determined to be the "parent" for purposes of this definition.

(Authority: 20 U.S.C. 1401(23); 14 Del.C. § 3110)

"Physical restraint" means a restriction imposed by a person that immobilizes or reduces the ability of a student to freely move arms, legs, body, or head. "Physical restraint" does not include physical contact that:

- Helps a student respond or complete a task;
- Is needed to administer an authorized health-related service or procedure; or
- Is needed to physically escort a student when the student does not resist or the student's resistance is minimal.

(Authority: 14 Del.C. § 4112F(a)(3))

"Principal" means the building principal, or the equivalent of the building principal, of any public school or charter school, or the building principal's designee.

"Private program" means a non-public school or program contracted by a school district or charter school.

"Public school personnel" means an employee or contractor of a public school district or charter school.

"Public school personnel" does not include the following:

- A law enforcement officer as defined in § 9200(b) of Title 11; unless the law enforcement officer meets the definition of a School Resource Officer/SRO; or
- An employee or contractor providing educational services within a Department of Correction or Division of Youth Rehabilitative Services facility. (Authority: 14 Del.C. § 4112F(a)(4))

"School Resource Officer (SRO)" means a contractor, subcontractor or employee of a public school district or charter school who is a sworn law enforcement officer as defined in 11 Del.C. § 9200.

"Seclusion" means the involuntary confinement of a student alone in a room, enclosure, or space that is either locked or, while unlocked, physically disallows egress. The use of a "timeout" procedure during which a staff member remains accessible to the student shall not be considered "seclusion." (Authority: 14 Del.C. § 4112F(a)(5))

"Student" means any individual enrolled in a Delaware public school or charter school, an alternative program pursuant to 14 Del.C. Ch. 16, or a private program pursuant to Title 14 Del.C. Chapter 31, Section 3124.

"Timeout" means a behavior management technique in which, to provide a student with the opportunity to reflect or regain self-control, a student is separated from others for a limited period in a setting that is not locked and the exit is not physically blocked by furniture, closed door held shut from outside, or other inanimate object. (Authority: 14 Del.C. § 4112F(a)(6))

"Written report" means printed paper filings and electronic filings that can be printed.

### 3.0 Use of Restraints

3.1 Public school personnel, private program personnel, and alternative program personnel are prohibited from imposing on any student:

3.1.1 Chemical restraint; and

3.1.2 Subject to waiver authorized by 14 Del.C. § 4112F(c)(4) and Section 8.0, mechanical restraint and seclusion.

3.2 Such personnel may impose physical restraint only in conformity with all of the following standards:

3.2.1 The student's behavior presents a significant and imminent risk of bodily harm to self or others;

3.2.2 The physical restraint does not interfere with the student's ability to communicate in the student's primary language or mode of communication;

3.2.3 The physical restraint does not interfere with the student's ability to breathe or place weight or pressure on the student's head, throat, or neck;

3.2.4 The physical restraint does not recklessly exacerbate a medical or physical condition of the student;

3.2.5 Less restrictive interventions have been ineffective in stopping the imminent risk of bodily harm to the student or others, except in case of a rare and clearly unavoidable emergency circumstance posing imminent risk of bodily harm, including, without limitation, intervening in a student initiated physical assault or altercation;

3.2.6 For a student with a disability as defined in Chapter 31 of Title 14 or 34 C.F.R. Part 104, the physical restraint does not contravene provisions in an individualized education program (IEP), behavior intervention plan, accommodation plan, or any other planning document for the individual student;

3.2.7 Personnel use only the amount of force necessary to protect the student or others from the threatened harm;

3.2.8 The physical restraint ends when a medical condition occurs putting the student at risk of harm or the student's behavior no longer presents an imminent risk of bodily harm to the student or others;

3.2.9 The physical restraint is within the scope of force authorized by § 468 of Title 11.

(Authority: 14 Del.C. § 4112F(b))

#### 4.0 Training of Personnel

4.1 Except as provided in 14 Del.C. § 702(c), a student may be physically restrained only by public school personnel, private program personnel, or alternative program personnel who have completed training in physical restraint procedures.

4.1.1 Such personnel shall receive annual training in the use of crisis prevention and intervention techniques consistent with nationally-recognized training programs, which shall meet the following minimum requirements:

4.1.1.1 The training shall address prevention techniques, de-escalation techniques, and positive behavioral intervention strategies and supports;

4.1.1.2 The training shall be designed to meet the needs of such personnel consistent with their duties and the potential need for emergency safety interventions; and

4.1.2 Each public school, private program, and alternative program shall maintain written or electronic documentation of each training provided, which shall include a list of all personnel who participated in the training.

4.2 Any public school personnel responsible for reporting the physical restraint of a student to the Department shall complete training on the reporting process approved by the Department and any additional training that the Department may prescribe from time to time.

4.2.1 The approved training shall be provided using a web-based platform through the Department's Professional Development Management System (PDMS) or similar system. The training will be provided on an annual basis and made available throughout each school year.

4.2.2 Such personnel responsible for reporting the physical restraint of a student shall complete the approved training at least once every three (3) years and during any year in which reporting procedures were changed from the previous year as indicated by the Department.

#### 5.0 Parental Notification of Use of Physical Restraint

5.1 Except as provided in Section 5.1.1, if a student is physically restrained, a reasonable attempt shall be made to notify the parent on the same day, but in no event later than twenty-four hours after, the physical restraint is used. Such notification shall be made in person, by phone or by voicemail, or by e-mail. The school shall maintain written documentation of successful and unsuccessful attempts to notify the parent.

5.1.1 Where physical restraint is included in the student's IEP or Section 504 Plan, the IEP Team or Section 504 Team, including the parent, shall determine a timeframe and manner of notification of each incident of physical restraint.

5.2 The parent shall be provided a copy of a final written report no later than the date on which such report is filed with the Department. The written report shall contain, at a minimum, the information required under Section 6.0.

#### 6.0 Uniform Data Collection

6.1 When an incident of physical restraint of a student by school personnel occurs:

6.1.1 As soon as practicable thereafter, a reasonable attempt shall be made to interview the student regarding the incident; and

6.1.2 The school principal must provide a written report, in a uniform format as determined by the Department, of the restraint to the Department within seventy-two (72) hours of the restraint, or within seventy-two (72) hours of the time in which the student's district or charter school of residence receives notice of the restraint from the contracted private program or alternative program, whichever the case may be; and

6.1.3 The written report shall include, at a minimum:

6.1.3.1 Details of the restraint incident, including, but not limited to, the student behavior and description of events leading to the use of physical restraint; de-escalation techniques utilized by school personnel prior to the restraint; a description of the student's behavior during the restraint; a summary of witness interviews, if applicable; any injury caused to the student, staff member(s), or other student(s); and any related treatment deemed necessary as a result of the restraint.

6.1.3.2 Demographic information on affected students to include age, race, ethnicity, and disability category;

6.1.3.3 A description of the interview conducted with the student, if applicable; and

6.1.3.4 If applicable, a description of changes to any or all of the following that resulted from the restraint incident:

6.1.3.4.1 For a student with a disability as defined in Chapter 31 of Title 14 or 34 C.F.R. Part 104, the student's IEP, behavioral support, crisis intervention plan, accommodation plan, or any other planning document for the individual student;

6.1.3.4.2 School/LEA policy or procedure; or

6.1.3.4.3 Additional staff training.

#### 7.0 Annual Reporting Requirement

The Department shall issue an annual report on the use of physical restraint, which shall include rates of usage by school and by subcategories identified pursuant to Section 6.0, identify trends, and analyze significant results. The report shall be posted on the Department's website.



## 8.0 Waiver

8.1 Any public school, private program, or alternative program applicant for a waiver of the prohibition on the use of mechanical restraints or seclusion for an individual student must deliver the request in writing, in a uniform format developed by the Department, to the Secretary or Secretary's designee setting forth the grounds for the request.

8.1.1 The request shall be based on compelling justification supported by documentation, including, but not limited to, educational records, reporting of incidents, and the student's functional behavioral assessment and behavioral intervention plan, including implementation data, and medical documentation, if applicable.

8.1.2 The request shall contain a description of the conditions and safeguards that the applicant will utilize in connection with the waiver, including, but not limited to:

8.1.2.1 A detailed description of the proposed continual visual staff monitoring of student;

8.1.2.2 A requirement that the parent be notified of each use of mechanical restraint or seclusion which conforms to the procedure set forth in Section 5.0 for reporting physical restraint except that the provisions of 5.1.1 shall not apply herein; and

8.1.2.3 A detailed description of the physical space within which the seclusion(s) will occur, or of the type of mechanical restraint(s) to be utilized, whichever is applicable.

8.1.3 The request shall include a written authorization signed by the parent agreeing to the issuance of a waiver on the prohibition of the use of mechanical restraints or seclusion for that student and a signed written consent for release of information to the Department and the waiver review committee.

8.1.4 All privileged documentation shall be maintained confidentially by the Department and the waiver review committee to the extent permitted by law.

8.2 All requests shall be considered by a waiver review committee appointed by the Secretary. A decision by the waiver review committee shall be rendered no later than (60) sixty calendar days of receipt of the waiver request.

8.3 The committee shall make a written recommendation to the Secretary, which shall include:

8.3.1 A summary of the compelling justification based on the documentation submitted in support of the waiver requested;

8.3.2 Recommendations to include any specific conditions and safeguards, and a brief statement of the reasons therefore;

8.3.3 A requirement that, where a waiver is issued, there be continual visual monitoring, parental notice of each use of mechanical restraint or seclusion, and collection of data to include the number of times the student was subject to mechanical restraint or seclusion, the duration of each mechanical restraint or seclusion, and any other data as required by the Department;

8.3.4 A statement as to the duration of the waiver, not to exceed a period of one calendar year.

8.4 The Secretary shall consider the entire record of the case and the committee's recommendations in reaching a final decision. The Secretary's decision shall be issued in writing and mailed to the applicant and the parent by certified mail no later than ten (10) calendar days from receipt of the recommendation of the waiver review committee.

8.5 The Secretary's decision shall be final.

## ***Exclusionary Discipline: Suspension, Expulsion, and Alternative Placement***

### **Grounds for Suspension or Expulsion**

#### **LAWS**

##### **11 Del.C. §1457. Possession of a weapon in a Safe School and Recreation Zone; class D, E, or F felony; class A or B misdemeanor.**

(j) The penalty for possession of a weapon in a Safe School and Recreation Zone shall be:

(5) In the event that an elementary or secondary school student possesses a firearm in a Safe School and Recreation Zone in addition to any other penalties contained in this section, the student shall be expelled by the local school board or charter school board of directors for a period of not less than 180 days unless otherwise provided for in federal or state law. The local school board or charter school board of directors may, on a case by case basis, modify the terms of the expulsion.

(6) In the event that an elementary or secondary school student possesses a deadly weapon other than a firearm in a Safe School and Recreation Zone in addition or as an alternative to any other penalties contained in this section, the student may be suspended for a period of not less than 30 days unless otherwise provided for in federal or state law. The local school board or charter school board of directors may, on a case by case basis, modify the terms of the suspension.

#### **REGULATIONS**

##### **14 DE Admin. Code §603. Compliance with the Gun Free Schools Act.**

###### **1.0 Written Policy Required**

1.1 Each school district and charter school shall have a written policy implementing the Gun-Free Schools Act (20 U.S.C. § 7961) and complying with 11 Del.C. § 1457(j) or its successor statute. At a minimum, the policy must contain the following elements:

1.1.1 A student who is determined to have brought a firearm to school, or to have possessed a firearm at school, shall be expelled for not less than one year.

1.1.2 Modification to the expulsion requirement may be made on a case by case basis by the chief school officer. Any modification to the expulsion requirement must be made in writing to the Department.

1.1.3 The definition of "Firearm" shall be the same as the meaning given to the term in the federal Gun-Free Schools Act.

##### **14 DE Admin. Code §614. Uniform definitions for student conduct which may result in alternative placement or expulsion.**

###### **1.0 Purpose**

Pursuant to 14 Del.C. § 122(b)(26), this regulation provides uniform definitions for student conduct which may result in alternative placement or expulsion. This regulation shall apply to all school districts and charter schools. Nothing contained here shall be interpreted to require the alternative placement or expulsion of a student, nor shall this regulation be interpreted to restrict the ability of school districts and charter schools to determine which student conduct shall result in expulsion or an alternative placement.

###### **2.0 Definitions**

Since some definitions of Section 2.0 may not be age appropriate, this section shall not be required to be published in a district or charter school's Student Code of Conduct. The district/charter school shall publish an internet link to this entire regulation in the Student Code of Conduct and provide a paper copy of the regulation upon request of a member of the public. In this regulation, the following terms shall have the meanings indicated below:

"Alcohol" shall have the same definition as provided in 4 Del.C. § 101(1).

"Alcohol Liquor" shall have the same definition as provided in 4 Del.C. § 101(2).

"Charter School" means a charter school board established pursuant to 14 Del.C. Ch. 5.

"Commission by a student" means that a student has engaged in behavior equivalent to that which is prohibited by law regardless of whether the student has been criminally convicted of the same.

"Crime" shall have the same definition as provided in 14 Del.C. § 4112.

"Dangerous Instrument" shall have the same definition as provided in 11 Del.C. § 222(4).

"Deadly Weapon" shall have the same definition as provided in 11 Del.C. § 222(5).

"Distribute", "Distributing" or "Distribution" means the transfer or attempted transfer of Alcohol, a Drug, a Look Alike Substance, a Drug Like Substance, or Drug Paraphernalia to any other person with or without the exchange of money or other valuable consideration.

"District" means a reorganized school district or vocational technical school district established pursuant to 14 Del.C. Ch. 10.

"Drug" means any "controlled substance" or "counterfeit controlled substance" as defined in 16 Del.C. § 4701.

"Drug Like Substance" means any non-controlled and non-prescription substance capable of producing a change in behavior or altering a state of mind or feeling, including, for example, some over the counter cough medicines, certain types of glue, caffeine pills and diet pills. The definition of Drug Like Substance does not include tobacco or tobacco products which are governed by 14 DE Admin. Code 877 Tobacco Policy.

"Drug Paraphernalia" shall have the same definition as provided in 16 Del.C. § 4701.

"Expulsion" means the exclusion from the regular school setting for a period determined by the local District board or Charter School board.

"Firearm" means handgun, rifle, shotgun, or other type of firearm as that term is defined in the federal Gun Free Schools Zone Act at 18 U.S.C.A. § 921.

"Look Alike Substance" means any non-controlled substance which is packaged so as to appear to be, or about which a student makes an express or implied representation that the substance is, a Drug or a non-controlled substance capable of producing a change in behavior or altering a state of mind or feeling.

"Nonprescription Medication" means any over the counter medication of which some may be a Drug Like Substance.

"Possess", "Possessing", or "Possession" means that a student has on the student's person, in the student's belongings, or under the student's reasonable control prohibited items or substances.

"Prescription Drugs" means any substance obtained directly from or pursuant to a valid prescription or order of a practitioner, as defined in 16 Del.C. § 4701, while acting in the course of his or her professional practice, and which is specifically intended for the student in whose possession it is found.

"School Environment" means within or on school property, and at school sponsored or supervised activities, including, for example, on school buses, at functions held on school grounds, at school sponsored extracurricular activities held on and off school grounds, and on field trips.

"Sexual Act" means (1) contact between the penis and the vulva or the penis and the anus, and for purposes of this definition contact involving the penis occurs upon penetration, however slight; (2) contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or (3) the penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object, with an intent to arouse or gratify the sexual desire of any person.

"Sexual Intercourse" shall have the same definition as provided in 11 Del.C. § 761.

"Sexual Offense" means any offense defined by 11 Del.C. §§ 763 through 780B and §§ 1108 through 1112B, and 1352 through 1353.

"Student Code of Conduct" means the District/Charter School approved document which specifies the rights and responsibilities of students, defines conduct that disrupts/threatens a positive/safe school environment, standardizes procedures for consequences, disciplinary action, and defines due process and grievance procedures.

"Theft" means those acts described in 11 Del.C. §§ 841 through 847 inclusive.

"Use" means that a student is reasonably known to have voluntarily ingested, smoked or otherwise assimilated Alcohol, a Drug or a Drug Like Substance, or is reasonably found to be under the influence of such a substance.

### 3.0 Uniform Definitions for Student Conduct

The following definitions shall be used whenever a school district or charter school uses such conduct as a basis for alternative placement or expulsion of a student:

"Arson" means a person recklessly or intentionally damages a building by intentionally starting a fire or causing an explosion.

"Assault III" means: (1) A person intentionally or recklessly causes physical injury to another person; or (2) With criminal negligence the person causes physical injury to another person by means of a Deadly Weapon or a Dangerous Instrument.

"Attorney General's Report (Juvenile Arrest Warrant and Complaint)" means the Department of Justice's report of out-of-school criminal conduct, regardless of jurisdiction, which shows disregard for the health, safety and welfare of others, including, but not limited to acts of violence, weapons offenses, and drug offenses.

"Breaking and Entering" means unauthorized entry of any locked area of the school environment during or after school; including, but not limited to, rooms, classrooms, auditorium, gym, shops, offices, lockers, cabinets and vehicles.

"Bullying" means any intentional written, electronic, verbal or physical act or actions against another student, school volunteer or school employee that a reasonable person under the circumstances should know will have the effect of: (1) Placing a student, school volunteer or school employee in reasonable fear of substantial harm to his or her emotional or physical well-being or substantial damage to his or her property; or (2) Creating a hostile, threatening, humiliating or abusive educational environment due to the pervasiveness or persistence of actions or due to a power differential between the bully and the target; or (3) Interfering with a student having a safe school environment that is necessary to facilitate educational performance, opportunities or benefits; or (4) Perpetuating bullying by inciting, soliciting or coercing an individual or group to demean, dehumanize, embarrass or cause emotional, psychological or physical harm to another student, school volunteer or school employee.

"Criminal Deadly Weapons/Dangerous Instrument Offense, Commission of" means the Commission by a student of an offense prohibited by 11 Del.C. §§ 1442 through 1460 inclusive.

"Criminal Drug Offense, Commission of" means the Commission by a student of the unlawful Possession, Distribution, or use of Alcohol, a Drug, a Drug-Like Substance, and/or Drug Paraphernalia.

"Criminal Mischief (Vandalism)" means a student, in the School Environment, intentionally or recklessly: (1) Damages tangible property of another person or entity; or (2) Tamper with tangible property of another person so as to endanger person or property.

"Criminal Sexual Offense, Commission of" means the Commission by a student of an offense prohibited by 11 Del.C. §§ 763 through 780B and §§ 1108, 1112B and § 1352 through § 1353.

"Criminal Violent Felony Offense, Commission of" means the Commission by a student of any violent felony as specified in 11 Del.C. § 4201(c).

"Cyberbullying" means the use of uninvited and unwelcome electronic communication directed at an identifiable student or group of students, through means other than face-to-face interaction, which (1) interferes with a student's physical well-being; or (2) is threatening or intimidating; or (3) is so severe, persistent, or pervasive that it is reasonably likely to limit a student's ability to participate in or benefit from the educational programs of the school district or charter school. Communication shall be considered to be directed at an identifiable student or group of students if it is sent directly to that student or group, or posted in a medium that the speaker knows is likely to be available to a broad audience within the school community.

"Dangerous Instrument Possession/Concealment/Sale" means the unauthorized possession, concealment or sale by a student in the School Environment of any instrument, article or substance which is readily capable of causing serious physical injury or death.

"Deadly Weapon Possession/Concealment/Sale" means the possession, concealment, or sale of a Deadly Weapon in the School Environment.

"Defiance of School Authority" means: (1) A verbal or non-verbal refusal to immediately comply with a reasonable request from school personnel, or refusal to identify oneself at the request of school personnel, and/or refusal to comply with disciplinary action; or (2) A verbal or non-verbal display of disrespect and/or uncivil behavior toward school personnel which either causes a substantial disruption or material interference with school activities.

"Disorderly Conduct" means conduct in the School Environment which causes public inconvenience, annoyance or alarm or creates a risk thereof by: engaging in fighting or violent tumultuous or threatening behavior or making an unreasonable noise or an offensively coarse utterance or gesture or display or addressing, abusive language to any person present.

"Distribution of Drugs and/or Alcohol and/or Drug Paraphernalia" means the sale, transfer, or distribution in school, on school property, or on school field trip of drugs or alcohol.

"Extortion" means to obtain or attempt to obtain money, goods, services, or information from another by force or the threat of force.

"Felony Theft (\$1500 or more)" means: (a) When a person takes, exercises control over or obtains property of another person intending to deprive that person of it or appropriate it; or (b) When a person, in any capacity, legally receives, takes, exercises control over or obtains property of another which is the subject of Theft, and fraudulently converts the property to the person's own use. The Theft is considered a felony when the value of the property received, retained, or disposed of is \$1500 or more or the victim is 62 years of age or older, or an "adult who is impaired" as defined in § 3902(2) of Title 31, or a "person with a disability" as defined in § 3901(a)(2) of Title 12.

"Fighting" means any aggressive physical altercation between two or more individuals.

"Gambling" means participation in games of chance for money or other things of value.

"Gun Free Schools Violation" means the prohibited bringing to school, or possession while in school of a firearm by a student.

"Harassment" means any actions or statements made with the intent to harass, annoy, or alarm another person which: A) insults, taunts, or challenges the other person or; B) is a cause of alarming or distressing conduct which serves no legitimate purpose and is done in a manner which the actor knows is likely to provoke a violent or disorderly response or cause a reasonable person to suffer fear, alarm, or distress.

"Inhalant Abuse" means chemical vapors that are inhaled for their mind-altering effects.

"Medications: Inappropriate Use or Possession" means Possessing or using Nonprescription Medication or Prescription Drugs of any type in the School Environment in violation of 14 DE Admin. Code 612.

"Misuse of Technology" means:

The use of school technology equipment in:

Soliciting, using, receiving or sending pornographic or obscene material; or

Accessing unauthorized email; or

The unauthorized downloading and/or installing of files; or

Intentionally damaging technology equipment in the School Environment; or

A situation in which a student deliberately:

Tampers with, damages, alters, accesses, crashes, or corrupts the computer/communications system in the School Environment resulting in the loss or corruption of information or the ability of the system to operate; or

In any way disrupts or degrades the school or District's technology infrastructure.

"Offensive Touching" means intentionally touching another person either with a member of his or her body or with any instrument, knowing that the person is thereby likely to cause offense or alarm to such other person; or Intentionally striking another person with saliva, urine, feces or any other bodily fluid, knowing that the person is thereby likely to cause offense or alarm to such other person.

"Pornography" means the possession, sharing, or production of any known obscene material in the School Environment.

"Rape or Attempted Rape" means sexual intercourse and attempted Sexual Intercourse without consent of the victim in both cases.

"Reckless Burning" means when a person intentionally or recklessly starts a fire or causes an explosion and recklessly places a building or property in danger of destruction or damage or places another person in danger of physical injury.

"Repeated Violations of Student Code of Conduct" means five or more violations of the school's Code of Conduct within a school year, excluding chronic infractions for tardiness or unexcused absences to school/class.

"Sexual Assault" means any unwanted sexual behavior committed by a perpetrator who is a stranger to the victim or by a perpetrator who is known by the victim or related to the victim by blood, marriage or civil union. Behaviors that fall under this definition include but are not limited to: sexual harassment as defined in § 763 of Title 11; sexual contact as defined in § 761 of Title 11; Sexual Intercourse as defined in § 761 of Title 11; sexual penetration as defined in § 761 of Title 11; and child sexual abuse as defined in § 901 of Title 10.

"Sexual Misconduct" means a consensual sexual act or acts between individuals within the School Environment.

"Stealing" means taking, exercising control over or obtaining property of another person intending to deprive that person of it or appropriate it.

"Steroids Possession and/or Use" means the unlawful use or possession of steroids.

"Tampering with Public Records" means a person knowingly without valid authorization removes, mutilates, destroys, conceals, makes a false entry in or falsely alters any original record or other written material filed with, deposited in or otherwise constituting a record of a public office or public servant.

"Teen Dating Violence" means assaultive, threatening or controlling behavior, including stalking as defined in 11 Del.C. § 1312, that one person uses against another person in order to gain or maintain power or control in a current or past relationship. The behavior can occur in both heterosexual and same sex relationships, and in serious or casual relationships.

"Terroristic Threatening" means when: (1) A person threatens to commit any Crime likely to result in death or in serious injury to person or property; or (2) A person commits an act with intent of causing an individual to believe that the individual has been exposed to a substance that will cause the individual death or serious injury.

"Terroristic Threatening - Security Threat" means when a person makes a false statement or statements: (1) Knowing that the statement or statements are likely to cause evacuation in the School Environment; (2) Knowing that the statement or statements are likely to cause serious inconvenience in the School Environment; or (3) In reckless disregard of the risk of causing terror or serious inconvenience in the School Environment.

"Unlawful Sexual Contact III" means when a student has sexual contact with another person or causes the victim to have sexual contact with the student or a third person and the student knows that the contact is either offensive to the victim or occurs without the victim's consent.

"Use and/or Possession of a Drug and/or Alcohol and/or Drug Paraphernalia" means that in the School Environment a student unlawfully possesses, uses or is under the influence of Alcohol, a Drug, Drug Paraphernalia, or any substance or paraphernalia consistent with the definitions of these substances or paraphernalia.

"Violation of Behavior Contract" means the failure of a student to comply with the provisions of any behavior contract between the student, the student's legal guardian, and the school.

#### **14 DE Admin. Code §616. Uniform due process procedures for alternative placement meetings and expulsion hearings.**

##### **5.0 Suspensions**

###### **5.1 Short-term Suspension**

5.1.1 The Principal, in accordance with the rules of the district/charter school, shall have the right to impose a Short-term Suspension on any student in the school who has violated the school's Student Code of Conduct. The duration of the Short-term Suspension shall not be more than ten (10) consecutive school days for any single conduct violation or combination of violations which occurred during a single disciplinary incident.

5.1.2 The Superintendent, in accordance with the rules of the district/charter school, shall have the right to temporarily extend a student's Short-term Suspension beyond the ten school day limit pending a district/charter Alternative Placement Meeting decision or the district/charter's Board of Education decision regarding an Expulsion hearing or other formalized Disciplinary Action hearing for the student.

5.1.2.1 A student whose Short-term Suspension has been temporarily extended beyond ten (10) consecutive school days shall receive Appropriate Educational Services beginning on the first day of the extension. Educational services shall continue until the student's district/charter Alternative Placement Meeting decision has been rendered or the district/charter's Board of Education decision regarding the student's Expulsion hearing or other formalized Disciplinary Action hearing has

concluded. This does not preclude a district/charter from providing Appropriate Educational Services during a Short-term Suspension prior to the extension.

## 5.2 Long-term Suspension

5.2.1 The Superintendent, in accordance with the rules of the district/charter school, shall have the right to impose a Long-term Suspension on any student in the school who has violated the school's Student Code of Conduct's listed acts of misconduct as defined in 14 DE Admin. Code 614.3. The duration of the Long-term Suspension shall not exceed the number of school days in a school year for any single conduct violation or combination of violations which occurred during a single disciplinary incident.

5.3 Prior to any Suspension from school, the initial due process procedures outlined in subsection 4.1 of this regulation shall be followed unless temporarily delayed as allowed in subsection 4.2 of this regulation.

5.4 When a student receives a Suspension from school (in or out-of-school), reasonable attempts to provide verbal notification to the Parent shall be made by the Principal prior to the Suspension being served. Written notification of the Suspension and information regarding the districts/charters appeal or Grievance process shall be given or sent to the Parent as soon as practicable, but no later than three business days. The notification shall state the cause and duration of the Suspension.

5.4.1 The Parent or student may appeal the Suspension to the next administrative level in accordance with the district/charter's appeal or Grievance process.

5.5 Prior to the student's return from an out-of-school Suspension of three (3) school days or more, the Principal shall hold an in-person or phone conference with the Parent and student. A definite time, date, and place for the conference shall be designated by the Principal. The Principal may waive this conference requirement.

## Limitations or Conditions on Exclusionary Discipline

### LAWS

#### **14 Del.C. §703. Student discipline report; school discipline improvement plan.**

(b) If a school is identified as meeting a threshold under paragraph (a)(4) of this section for 3 consecutive school years, the Department shall notify the school of this status by December 1 and the school must do all of the following:

(3) Submit a plan to the Department that identifies the strategies the school will implement beginning in the following school year to reduce the use of exclusionary disciplinary practices or disproportionate use of exclusionary disciplinary practices with racial subgroups or students with disabilities, or both.

#### **11 Del.C. §1457. Possession of a weapon in a Safe School and Recreation Zone; class D, E, or F felony; class A or B misdemeanor.**

(j) The penalty for possession of a weapon in a Safe School and Recreation Zone shall be:

(5) In the event that an elementary or secondary school student possesses a firearm in a Safe School and Recreation Zone in addition to any other penalties contained in this section, the student shall be expelled by the local school board or charter school board of directors for a period of not less than 180 days unless otherwise provided for in federal or state law. The local school board or charter school board of directors may, on a case by case basis, modify the terms of the expulsion.

(6) In the event that an elementary or secondary school student possesses a deadly weapon other than a firearm in a Safe School and Recreation Zone in addition or as an alternative to any other penalties



contained in this section, the student may be suspended for a period of not less than 30 days unless otherwise provided for in federal or state law. The local school board or charter school board of directors may, on a case by case basis, modify the terms of the suspension.

## **REGULATIONS**

### **14 DE Admin. Code §603. Compliance with the Gun Free Schools Act.**

#### **1.0 Written Policy Required**

1.1 Each school district and charter school shall have a written policy implementing the Gun-Free Schools Act (20 U.S.C. § 7961) and complying with 11 Del.C. § 1457(j) or its successor statute. At a minimum, the policy must contain the following elements:

1.1.1 A student who is determined to have brought a firearm to school, or to have possessed a firearm at school, shall be expelled for not less than one year.

1.1.2 Modification to the expulsion requirement may be made on a case by case basis by the chief school officer. Any modification to the expulsion requirement must be made in writing to the Department.

1.1.3 The definition of "Firearm" shall be the same as the meaning given to the term in the federal Gun-Free Schools Act.

## **Due Process**

## **LAWS**

### **14 Del.C. §122. Rules and regulations.**

(b) The Department shall prescribe rules and regulations:

(26) Establishing, for purposes of student discipline, uniform definitions for student conduct which may result in alternative placement or expulsion, uniform due process procedures for alternative placement meetings and expulsion hearings, and uniform procedures for processing Attorney General's reports. Such regulations shall apply to all districts and charter schools. This paragraph shall not be interpreted to restrict the ability of district and charter schools to determine which student conduct shall result in expulsion or an alternative placement.

### **14 Del.C. §701. Authority of teachers and administrators to control the disruptive behavior of students.**

(d) When a student is removed from a classroom or school-sponsored activity or is disciplined or punished pursuant to this section, the principal or the principal's designee shall afford the student appropriate due process as required by the federal and State constitutions.

### **14 Del.C. §2702. Compulsory attendance requirements; evaluation of readiness; exit interview.**

(a) Except as otherwise provided, the following provisions are applicable to school attendance in this State:

(3) Every student who is enrolled in a public school of this State shall attend the school each day of the minimum school term and any academic improvement activities required by § 153 of this title. A student who has been absent from school without a valid excuse for more than 3 school days in a school year is a truant. A truant and the parent of a truant are subject to the administrative procedures and court proceedings set out in subchapter II of this chapter.

#### **14 Del.C. §2732. Appeals.**

(a) A parent convicted within the Justice of the Peace Court of a violation of § 2702 of this title may appeal to the Court of Common Pleas in the county in which the judgment was given. The appeal shall be filed within 15 days from the date of conviction. On appeal the Court of Common Pleas shall make a de novo determination. [...]

(c) A student who has been adjudicated truant within the Justice of the Peace Court pursuant to § 2730 of this title may appeal to the Family Court in the county in which the adjudication occurred. The appeal shall be filed within 15 days of the date of the adjudication. On appeal the Family Court shall make a de novo determination based on the record below.

(d) No appeal of the adjudication of truancy or truancy-related contempt pursuant to subsection (c) of this section shall stay execution of the remedial disposition unless a judge of the Family Court orders a stay.

#### **14 Del.C. §4122. Parent's failure to attend school conference with superintendent; subpoena to compel attendance.**

(a) "Parent" as used in this section means natural parent, adoptive parent, any person legally charged with the care or custody of a student under 18 years of age, or any person who has assumed responsibility for the care of a student under 18 years of age including any person acting as a caregiver pursuant to the provisions of § 202(f) of this title.

(b) When a parent fails to attend, participate or respond to a public school or charter school superintendent's request for a conference to discuss matters involving alleged violations of school rules or regulations by the parent's child, the public school or charter school superintendent or the superintendent's designee may request that the Justice of the Peace Court issue a subpoena to compel the presence of the parent at a conference with the superintendent.

(c) Prior to the issuance of a subpoena to compel the presence of a parent, the superintendent or a designee must provide evidence that the superintendent or a designee has:

- (1) Made a reasonable attempt to schedule the conference at a time that does not conflict with the employment hours of the parent; and
- (2) Sent written notice of the conference by regular United States mail to the address of record of the parent, which notice shall include the reason for the conference and a statement that failure to schedule or attend the conference may result in the issuance of a subpoena.

(d) After verifying that the superintendent or a designee has sent the required notice, the Justice of the Peace Court may, in its discretion, issue a subpoena pursuant to Justice of the Peace Civil Rule 18 which shall compel the presence of the parent at a conference with the superintendent.

(e) If a parent fails to obey a subpoena properly served under this section, the superintendent may file a motion for an order holding the parent in contempt of court. The Justice of the Peace Court shall have jurisdiction over this matter. A parent found guilty of contempt for failure to appear at a conference after receiving a subpoena may be ordered by the Court to attend school with the student, attend family counseling, and/or comply with such other conditions as the Court may order.

(f) Proceedings against a parent of a suspended or expelled child may also be filed pursuant to subchapter II of Chapter 27 of this title for each day that the child is absent beyond the period of suspension or expulsion without a valid excuse as a result of the parent's failure to attend or schedule a conference after having received notification of the suspension or expulsion.

## REGULATIONS

### **14 DE Admin. Code §616. Uniform due process procedures for alternative placement meetings and expulsion hearings.**

#### 3.0 Preliminary Discipline Investigation & Reporting Requirements

##### 3.1 Investigatory Procedures & Timeline

3.1.1 In any instance when student Disciplinary Action which may result in removal of the student out of the Regular School Program for one day or more is contemplated, the Principal shall conduct a preliminary investigation to determine if there is reasonable basis to pursue Disciplinary Action.

3.1.1.1 The Principal may remove the allegedly offending student from the general student population while conducting the preliminary investigation if the student's presence in the School Environment poses a threat to the health, safety, or welfare to persons or property within the School Environment, as determined by the Principal. Initial due process in accordance with subsection 4.2.1 of this regulation shall be provided. [...]

#### 4.0 Initial Due Process

4.1 A student shall be afforded initial due process rights for discipline procedures which result in the removal of the student for one day or more from the Regular School Program due to a violation of the school's Student Code of Conduct.

4.1.1 Prior to any removal of one day or more from the Regular School Program due to a violation of the school's Student Code of Conduct:

4.1.1.1 The student had prior opportunity to be informed in accordance with the established Student Code of Conduct rules and/or regulations.

4.1.1.2 The administrator/designee shall inform, orally or in writing, the student of the allegation(s) against him/her, the conduct which forms the basis of the allegation(s), and the policy, rule, or regulation violated.

4.1.1.3 The student shall be given an explanation of the evidence supporting the allegation(s) and an opportunity to present his/her side of the story including any evidence.

##### 4.2 Due Process Delay Provision

4.2.1 A student whose presence in the School Environment poses a threat to the health, safety, or welfare to persons or property within the School Environment, as determined by the Principal, may be immediately removed from school provided that, as soon as practicable thereafter, the initial due process procedures outlined in subsection 4.1 of this regulation are followed.

4.3 In addition to the initial due process rights, a student who is recommended for Alternative Placement or Expulsion shall receive applicable additional due process rights as outlined in Sections 7.0, 10.0, and 11.0 of this regulation. [...]

#### 5.0 Suspensions

5.3 Prior to any Suspension from school, the initial due process procedures outlined in subsection 4.1 of this regulation shall be followed unless temporarily delayed as allowed in subsection 4.2 of this regulation. [...]

#### 10.3 Expulsion Hearings

10.3.1 Upon receipt of a recommendation following the Building Level Conference, the Superintendent shall review documentation to affirm that appropriate discipline procedures were followed. The Superintendent shall, within ten (10) business days of the date of the incident, notify the student and the Parent by letter that a district-level Expulsion hearing will be held to consider the recommendation.

- 10.3.1.1 The Superintendent shall not have been a participant in the disciplinary investigation or Building Level Conference resulting in the recommendation for Expulsion.
- 10.3.2 Written notice shall, at a minimum, be sent by regular U.S. and certified mail to the Parent describing the circumstances which led to the recommendation for Expulsion and shall give the date, time, and location of the hearing.
- 10.3.3 The hearing shall be held not less than seven (7) business days or more than twenty (20) business days after receipt of written notice. The written notice shall be deemed to be received on the fourth business day following the day of mailing. This time period may be waived by agreement of the parties. A copy of the documentation shall be made available, upon request, to the student and Parent at the district/charter school office prior to the mailing.
- 10.3.4 If requested, the student and Parent will also be given a copy of the following:
- 10.3.4.1 The reason(s) for the recommendation;
  - 10.3.4.2 The name(s) of witnesses who may appear; and
  - 10.3.4.3 Copies of information that may be submitted as evidence.
- 10.3.5 The district/charter shall receive written Parent permission for any witness who is a minor.
- 10.3.6 The hearing shall be conducted by a district/charter Board of Education or Hearing Officer.
- 10.3.7 The Board of Education or Hearing Officer shall have full authority to admit or exclude evidence.
- 10.3.7.1 Evidence presented at the Expulsion hearing may include, but is not limited to, witness statements, police or Attorney General's Reports, and photocopies of evidence.
  - 10.3.7.2 The Board of Education or Hearing Officer is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure except as herein stated.
  - 10.3.7.3 The Board of Education or Hearing Officer may exclude plainly irrelevant, immaterial, insubstantial, cumulative and privileged evidence.
  - 10.3.7.4 The Board of Education or Hearing Officer may limit unduly repetitive proof, rebuttal and cross examination.
- 10.3.8 In conducting the hearing, the district/charter school shall submit evidence first followed by the response of the student, if any.
- 10.3.8.1 Further evidence by either party may be presented at the hearing if the Board of Education or Hearing Officer determines such evidence is necessary.
- 10.3.9 The Superintendent presenting the case on the part of the district/charter school shall not testify.
- 10.3.10 The hearing shall be recorded in a manner that will permit transcription.
- 10.3.11 The student shall have the following rights:
- 10.3.11.1 To be represented by legal counsel at the student's expense;
  - 10.3.11.2 To cross-examine witnesses;
  - 10.3.11.3 To testify and produce witnesses on his/her behalf; and
  - 10.3.11.4 To obtain, at the student's expense, a copy of the transcript of the hearing.
- 10.3.12 In lieu of a formal Expulsion hearing, a student may elect to waive the hearing and admit to the student's violation charge(s). The student and Parent shall submit a signed written hearing waiver which indicates that the student is knowingly and voluntarily waiving their right to the hearing. Such election may be exercised until the commencement of the hearing. This waiver does not absolve the student from required consequences under Federal or State Law or the Student Code of Conduct.

# Return to School Following Removal

## LAWS

### **14 Del.C. §411. Pupils suspended, expelled, or truant in district of residence.**

If a child for whom an application has been submitted pursuant to this chapter has been suspended or expelled, or has been absent from school without a valid excuse for more than 15 school days during a school year, in the district of residence, the board of the receiving district may, in its sole discretion, refuse to consider the application or refuse to approve the application, or refuse to enroll the child in the receiving district until the child has been reinstated in the district of residence, provided, however that nothing in this section shall be construed to enlarge upon the authority of any district to accept for re-enrollment any student who has been expelled from a school district in this State, as such authority is limited by the provisions of § 4130 of this title. "Valid excuse" shall have the same meaning as in § 2721 of this title.

### **14 Del.C. §701. Authority of teachers and administrators to control the disruptive behavior of students.**

(e) When a student is removed from a classroom or school-sponsored activity, the principal or the principal's designee and the removing teacher shall determine if and when a student may be readmitted to the classroom or school-sponsored activity. If the teacher and principal or principal's designee cannot agree, the superintendent or the superintendent's designee shall make the determination.

### **14 Del.C. §4130. Expulsion of students; re-enrollment.**

(a) In any case where a public school student is expelled from a school district or a charter school, the expelled student shall not be permitted to reenroll in any other school district or charter school in this State until after the full period of expulsion from the school district or charter school where the student was expelled shall have expired.

(b) Prior to enrolling any student who attempts to transfer to a school district or charter school in this State, the superintendent of that school district, or the superintendent's designee, the head of a charter school or such head's designee shall first contact the last school district or charter school where the student was last enrolled, if in this State, to determine if that student is under a current expulsion order in that district or charter school. If it is determined that the student is under a current expulsion order, that student shall not be permitted to enroll until the expulsion order has expired as set forth in subsection (a) of this section.

(c) Any student who has been expelled from a public school in this State or in any other state shall, prior to enrollment in any public school in this State, completely fulfill the terms of that expulsion.

(d) The provisions of subsections (a), (b) and (c) of this section shall not apply to any case in which a student is seeking to enroll in the James H. Grove High School or in any alternative educational or other related program developed to provide educational services to children who have discipline problems.

## REGULATIONS

### **14 DE Admin. Code §612. Possession, use or distribution of drugs and alcohol.**

4.0 Requirement of Each School District and Charter School to have a Policy

4.1 Each school district and charter school shall have a policy on file and update it periodically. The policy shall include, at a minimum, the following:

4.1.9 A policy which sets out the conditions for return after expulsion for Alcohol or Drug infractions.

**14 DE Admin. Code §616. Uniform due process procedures for alternative placement meetings and expulsion hearings.**

**5.0 Suspensions**

5.5 Prior to the student's return from an out-of-school Suspension of three (3) school days or more, the Principal shall hold an in-person or phone conference with the Parent and student. A definite time, date, and place for the conference shall be designated by the Principal. The Principal may waive this conference requirement. [...]

**9.0 Procedures for Student Return to the Regular School Program**

When a Student Review results in a recommendation for return to the comprehensive school setting, a Transitional Meeting at the student's comprehensive school will be held between the Alternative Program representative, the district/charter school representative, the student, the Parent, the school administrator, a teacher, a school counselor, a student advisor or disciplinarian, if assigned. Other individuals may be invited as determined by the members of the Transitional Meeting team. This meeting shall take place prior to a student's return to that comprehensive school and shall result in a document setting forth the terms of the return.

## **Alternative Placements**

### **LAWS**

**14 Del.C. §122. Rules and regulations.**

(b) The Department shall prescribe rules and regulations:

(24) Defining eligibility for supportive instruction for school district and charter school students. Such regulations shall identify the licensed professionals authorized to certify eligibility for supportive instruction and provide that the certification of an advanced practice nurse, who is employed by or who has a collaborative agreement with a licensed physician, be accepted on the same basis as a physician certification. For purposes of this paragraph, "supportive instruction" means an alternative educational program provided in a home, hospital, or other setting for students temporarily unable to attend their school of enrollment on a full-time basis due to sudden illness, injury, accident, episodic flare up of a chronic condition, or other basis authorized by the Department of Education through regulation; [...]

(26) Establishing, for purposes of student discipline, uniform definitions for student conduct which may result in alternative placement or expulsion, uniform due process procedures for alternative placement meetings and expulsion hearings, and uniform procedures for processing Attorney General's reports. Such regulations shall apply to all districts and charter schools. This paragraph shall not be interpreted to restrict the ability of district and charter schools to determine which student conduct shall result in expulsion or an alternative placement.

**14 Del.C. §1604. Treatment of severe discipline problems component.**

The Department of Education shall establish a program component which will provide alternative educational and related services for the more severe discipline problems in the public schools. This component will serve primarily secondary school students, including but not limited to: youngsters who have been expelled from regular schools, students who may be subject to expulsion, and others who have serious violations of the local school district discipline code. The Department of Education shall provide rules and regulations for the conduct of programs authorized under this section subject to the following limitations:

(8) A student 16 years of age or less who is expelled or suspended pending expulsion by a local school district or charter school shall be presumed appropriate for placement in a Consortium Discipline

Alternative Program site, provided the student is not otherwise ineligible by statute or regulation for placement in such a program. The burden of establishing that a student is not appropriate for placement in a Consortium Discipline Alternative Program shall be on the local school district or charter school. Any student not shown by preponderance of evidence to be inappropriate for placement in a Consortium Discipline Alternative Program shall be placed in such a program.

**14 Del.C. §1604A. Site selection for alternative educational facilities.**

(a) New alternative school programs funded on or after July 1, 2002, or alternative school programs except for those located on school property currently funded pursuant to § 1604 of this title that change locations on or after July 1, 2002, shall be subject to the following process:

(1) The school district or consortium of school districts shall notify by mail the Secretary of Education and every property owner located within 200 feet of the site's boundary lines that there is a plan to establish an alternative educational facility for children exhibiting discipline problems on the site. The notice must include the date, time and location of an informational meeting that will explain the details of the site, facility and program plans.

**14 Del.C. §1605. School and district level component.**

The Department of Education shall be authorized to approve and provide financial support for programs to provide alternative educational and related services to disruptive students in the public schools. This component will serve students, in schools enrolling pupils in grades K through 12, who are causing repeated disruptions in the regular classes to which they are assigned. Services may be delivered in a variety of modes with students assigned to the specific programs for short- or long-term assistance. Programs authorized under this section could also serve as a transition for youngsters returning from programs operated under the provisions of § 1604 of this title. The Department of Education shall provide rules and regulations for the conduct of programs authorized under this section subject to the following limitations:

(1) School districts shall be permitted to use personnel authorized by any of the provisions of this title to establish alternative educational and related service programs for disruptive students. Such personnel shall continue to be paid in accordance with salary schedules specified in Chapter 13 of this title.

**14 Del.C. §2730. Failure to attend; penalties.**

(c) If the Court determines the student has violated § 2702 of this title, it shall adjudicate the student a truant and may order the following remedial dispositions:

(9) A recommendation that the student enroll in the school in alternative educational and related services in accordance with Chapter 16 of this title.

**14 Del.C. §2733. Jurisdiction; venue.**

(d) In the event that a student withdraws from school for any reason other than age and does not re-enroll in another public school, the Family Court or Justice of the Peace Court, in its discretion, may retain jurisdiction for the purpose of ensuring that the student's alternative educational environment was not an attempt to avoid the compulsory attendance requirements of § 2702 of this title.

## REGULATIONS

### **14 DE Admin. Code §611. Consortium discipline alternative programs for treatment of severe discipline problems.**

1.1 Except as otherwise provided in this regulation, any student who is expelled by a local school district, who is subject to expulsion or who otherwise seriously violates the district discipline code shall be eligible for placement at a Consortium Discipline Alternative Program (CDAP) site.

1.2 Subject to Section 11.0, local school districts shall place an eligible student at a Consortium Discipline Alternative Program site if the district board:

1.2.1 Has expelled the student for a violation of the district's discipline code or, determined that the student has been suspended for engaging in conduct that could result in expulsion and has not required the student to participate in other options such as behavioral contracts or counseling or, determined that the student has exhibited such severe discipline problems that expulsion is imminent.

1.3 School districts may place a student in a Consortium Discipline Alternative Program for classroom or school environment disruptions only if:

1.3.1 Such disruptions are chronic and repetitive; and

1.3.2 The student has participated in all available School Based Intervention Programs pursuant to 14 DE Admin. Code 609 and continues to routinely and seriously disrupt the classroom and impede the learning of other students. [...]

#### 5.0 Grade Levels to be Served

Eligible students in the Consortium Discipline Alternative Program shall be primarily those who are enrolled in grades 6 through 12, however students in the lower grades may also be served through CDAP funds.

#### 6.0 Placement at Consortium Discipline Alternative Program Sites

6.1 Each district shall establish an Alternative Placement Team to review each case and prescribe the appropriate placement for students. The Placement Team, in concert with the Consortium Discipline Alternative Program staff, shall design an Individual Service Plan (ISP) for each student that will include educational goals, behavioral goals, and services needed by both students and their families. The ISP shall include a tentative transition plan.

6.1.1 The Alternative Placement Team shall be composed of a representative of the Consortium Discipline Alternative Program staff; a district-level coordinator who will be designated by the superintendent; the building level principal, assistant principal or other person as appropriate; the student's custodial adult; guidance counselor or school social worker; and a representative from the Department of Services for Children Youth and Their Families (DSCYF) with knowledge of the student's and family's needs as appropriate. Other individuals may be invited as determined by the placement team.

6.1.1.1 Students who are being placed at a Consortium Discipline Alternative Program site as a transition from DSCYF facilities shall have an ISP developed in concert with the DSCYF facility team, the Alternative Placement Team, and the student's custodial adult.

6.1.2 If students from either a school district or DSCYF facility are children with disabilities, appropriate special education staff shall be included in placement considerations. The Alternative Placement Team and the Individual Education Program (IEP) Team may be the same so long as the membership of the IEP Team meets the requirements of 14 DE Admin. Code 925.

#### 7.0 September 30 Enrollment Count



7.1 Students enrolled at a Consortium Discipline Alternative Program site shall be counted in the enrollment of the sending school.

7.2 Students shall be reported for the level of special education service as defined by the current IEP.

7.3 If a student was enrolled the previous year in a Career and Technical Program in the reporting school, the students shall be reported as enrolled in the next Career and Technical course in the program series.

#### 8.0 Consortium Discipline Alternative Program Setting

8.1 The Consortium Discipline Alternative Program setting shall be apart from the regular school setting, however, a part of a school building may be used for these programs if the students do not interact with the regular school population or use any school facility at the same time as the regular school population.

8.1.1 Use of other agency facilities (Boys and Girls Club, YMCA, YWCA, etc.) is encouraged. Consortium Discipline Alternative Program settings shall meet all applicable health and safety laws and regulations for student occupancy.

#### 9.0 Consortium Discipline Alternative Program Design

9.1 The Consortium Discipline Alternative Program shall include an educational program designed to maintain and improve skills aligned to the Delaware State Content Standards that will allow students to reenter the regular school program with a reasonable chance and expectation for success.

Opportunities for academic acceleration shall also be provided.

9.1.1 The academic program shall include applied learning activities that encourage students' active participation in the learning process as opposed to work sheets and other "seat oriented" drill exercises. Study skills, test-taking strategies for academic confidence building, and Character Education shall be integrated with the Delaware State Content Standards.

9.1.1.1 Credit for work accomplished in the Consortium Discipline Alternative Program setting shall be automatically transferred to the sending school.

9.1.2 All students enrolled in Consortium Discipline Alternative Programs shall participate in the Delaware Student Testing Program (DSTP) or successor statewide student assessment program, and Student Success Plans (SSP) as required by 14 DE Admin. Code 507.

#### 10.0 Staffing

Instructional staff shall include educators who are licensed and certified in the content areas of English language arts, mathematics, science and social studies.

### **14 DE Admin. Code §614. Uniform definitions for student conduct which may result in alternative placement or expulsion.**

#### 1.0 Purpose

Pursuant to 14 Del.C. § 122(b)(26), this regulation provides uniform definitions for student conduct which may result in alternative placement or expulsion. This regulation shall apply to all school districts and charter schools. Nothing contained here shall be interpreted to require the alternative placement or expulsion of a student, nor shall this regulation be interpreted to restrict the ability of school districts and charter schools to determine which student conduct shall result in expulsion or an alternative placement. [...]

### **14 DE Admin. Code §616. Uniform due process procedures for alternative placement meetings and expulsion hearings.**

#### 1.0 Purpose

Pursuant to 14 Del.C. § 122(b)(26), this regulation, which applies to all public school districts and charter schools, provides uniform procedures for the following situations: referral of students who warrant consideration for placement outside the Regular School Program into an Alternative Program; placement of students into an Alternative Program; monitoring student progress while in Alternative Placement; return of students back into the Regular School Program from an Alternative Program; Suspensions; and Expulsion hearings. [...]

## 5.0 Suspensions

### 5.1 Short-term Suspension

5.1.2 The Superintendent, in accordance with the rules of the district/charter school, shall have the right to temporarily extend a student's Short-term Suspension beyond the ten school day limit pending a district/charter Alternative Placement Meeting decision or the district/charter's Board of Education decision regarding an Expulsion hearing or other formalized Disciplinary Action hearing for the student.

5.1.2.1 A student whose Short-term Suspension has been temporarily extended beyond ten (10) consecutive school days shall receive Appropriate Educational Services beginning on the first day of the extension. Educational services shall continue until the student's district/charter Alternative Placement Meeting decision has been rendered or the district/charter's Board of Education decision regarding the student's Expulsion hearing or other formalized Disciplinary Action hearing has concluded. This does not preclude a district/charter from providing Appropriate Educational Services during a Short-term Suspension prior to the extension. [...]

## 7.0 Assignment to an Alternative Program

### 7.1 Procedures for Student Referral

#### 7.1.1 Criteria for student referral to an Alternative Placement.

7.1.1.1 A Principal may refer a student for Alternative Placement for any severe disciplinary violation for which Alternative Placement may be a consequence as specified in the district/charter school Student Code of Conduct and the student's behavior is within the defined conduct under 14 DE Admin. Code 614.

7.1.1.2 A Principal may refer a student for Alternative Placement for any offense listed in 14 Del.C. § 4112. Students ineligible as a result of an offense listed in 14 DE Admin. Code 611 shall not be referred to a Consortium Discipline Alternative Program.

7.1.1.3 A Principal may refer a student for Alternative Placement in conjunction with an Attorney General's Report or court disposition that indicates that the student has been charged with a Violent Felony and/or is a threat to the health, safety, and welfare of others within the School Environment. Students ineligible as a result of an offense listed in 14 DE Admin Code 611 shall not be referred to a Consortium Discipline Alternative Program.

7.1.1.4 A Principal may refer a student for Alternative Placement in conjunction with chronic disruptive behaviors which result in Repeated Violations of the Student Code of Conduct after all school-based best practice interventions have been put into place for said student. This may include, but is not limited to, counseling services, the development and implementation of a behavior support or modification plan, mentoring, referral to mediation, and participation in an available In-School Alternative Program.

7.1.1.5 Referral to a state funded Consortium Discipline Alternative Program must also meet the criteria set forth in 14 DE Admin. Code 611.

7.1.1.5.1 A referral of a charter school student to a Consortium Discipline Alternative Program shall also comply with the provisions of 14 Del.C. § 504A(8).

## 7.2 Responsibilities for Student Referral Which May Lead to Alternative Program Placement

7.2.1 When it is alleged that a student committed a violation of the Student Code of Conduct and may be subject to a recommendation for Alternative Placement, the following procedures shall occur:

7.2.1.1 The Principal shall conduct a preliminary investigation pursuant to Section 3.0 of this regulation to determine if there is reasonable basis to pursue Disciplinary Action.

7.2.1.2 If the preliminary investigation verifies that Disciplinary Action may be warranted, initial due process procedures outlined in Section 4.0 of this regulation shall be followed.

7.2.1.3 After the student has been afforded initial due process procedures, and if the Principal decides that Disciplinary Action will be taken, the student and Parent shall be notified.

7.2.1.4 The Principal may impose a Short-term Suspension. If the student is suspended, the student and the Parent shall be provided a copy of a Suspension form that includes a written notice of the Student Code of Conduct violation(s).

7.2.1.5 If the Principal decides that the Disciplinary Action should be a referral for an Alternative Placement, the Principal shall compile an Alternative Placement Packet for the student. The Alternative Placement Packet may also include other relevant information at the discretion of the Principal.

7.2.1.5.1 Schools/charters which utilize a site-based School Discipline Committee may have the committee meet to discuss the incident and make a recommendation to the Principal for the student to remain in the current school setting, or for referral to an Alternative Program.

7.2.1.6 A charter school Principal shall verify that the Alternative Placement referral meets the conditions set forth in 14 Del.C. § 504A(8).

7.2.1.7 For all referrals for Alternative Placement for a general education or special education student, the Principal shall hold a Building Level Conference with the Parent and the student.

7.2.1.7.1 The Principal shall explain to the Parent and the student the purpose of the meeting is to inform them: 1) of the referral for Alternative Placement; 2) that the student may be suspended pending the outcome of the district/charter school Alternative Placement Team Meeting and; 3) of the procedures that will take place as follow-up to the referral for Alternative Placement.

7.2.1.7.2 The conference shall be held by phone or in person.

7.2.1.7.3 The Principal shall have at least one other person present to take notes during the conference or shall have the conference audio recorded.

7.2.1.8 Notice of the Alternative Placement Meeting shall be mailed to the Parent and the student via regular U.S. and certified mail at least five business days before the meeting is to occur.

## 7.3 Alternative Placement Meeting for Districts/Charter Schools

7.3.1 A district/charter school Alternative Placement Meeting shall take place to determine if an alternative setting is appropriate for a referred student.

7.3.1.1 The Parent and student shall receive verbal and written notification of the district/charter school's Alternative Placement Meeting. Parents and student may, but are not required to, attend the meeting.

7.3.1.2 The Parent and student shall be informed of the district/charter school Alternative Placement Team's decision for placement within one (1) business day of the meeting.

7.3.1.2.1 If the decision is to assign to an Alternative Placement, the Superintendent shall send follow-up written notice within three (3) business days to the Parent describing the circumstances which led to the placement, identifying the Alternative Program to which the student is being assigned, and the conditions which must be met in order for the student to return to the Regular School Program.

#### 7.4 Student Assignment to an Alternative Program

7.4.1 The district/charter school representative shall contact the selected Alternative Program to set up a date and time for an Intake Meeting.

7.4.1.1 The Intake Meeting shall not occur unless all required participants are present, unless excused by the Superintendent, and documentation from the Alternative Placement Packet is provided.

7.4.1.1.1 Participants required to be present at the Intake Meeting include, but are not limited to, the student, the Parent, a district/charter school representative, the Alternative Program administrator, and other appropriate Alternative Program staff.

7.4.1.2 A student assigned to a Consortium Discipline Alternative Program must be registered in a district/charter school before the Intake Meeting is held.

7.4.1.3 The Intake Meeting will include the completion of necessary forms, including the Intake Form, which requires student and Parent signatures.

7.4.1.4 During the Intake Meeting, the district/charter school representative shall communicate, to all in attendance, the district/charter school's individualized goals and expectations for the alternatively placed student, including the Individualized Service Plan (ISP) under 14 DE Admin. Code 611, if applicable. The individualized goals and expectations shall be recorded on the Intake Form.

7.4.1.4.1 The Intake Form shall be signed by all parties, copied and distributed to the student and Parent, Alternative Program administrator, and district/charter school representative and shall become part of the student's educational record as defined by 14 DE Admin. Code 252.

7.4.2 The district/charter school shall maintain all alternatively placed students' enrollment status in Delaware Student Identification System (DELSIS) and eSchool PLUS database systems or successor Delaware Department of Education approved student database management system. A student placed in a Consortium Discipline Alternative Program shall have both an "active" and "service" status designation in DELSIS.

#### 8.0 Procedures for Student Monitoring while in Alternative Placement

8.1 A Student Review for each student in the Alternative Program shall be completed. Quarterly reviews are recommended. Semi-annual reviews are required.

8.1.1 The Student Review shall include an examination of student attendance, grades and Discipline Records, including the student's strengths and weaknesses in connection with their individualized goals and expectations at the time of the Student Review.

8.1.2 The Student Review shall also include recommendations for continued progress and/or return (or recommendation not to return) to the Regular School Program.

## ***Discipline Addressing Specific Code of Conduct Violations***

### **Firearms and Other Weapons Violations**

#### **LAWS**

##### **11 Del.C. §1457. Possession of a weapon in a Safe School and Recreation Zone; class D, E, or F felony; class A or B misdemeanor.**

(j) The penalty for possession of a weapon in a Safe School and Recreation Zone shall be:

(5) In the event that an elementary or secondary school student possesses a firearm in a Safe School and Recreation Zone in addition to any other penalties contained in this section, the student shall be expelled by the local school board or charter school board of directors for a period of not less than 180 days unless otherwise provided for in federal or state law. The local school board or charter school board of directors may, on a case by case basis, modify the terms of the expulsion.

(6) In the event that an elementary or secondary school student possesses a deadly weapon other than a firearm in a Safe School and Recreation Zone in addition or as an alternative to any other penalties contained in this section, the student may be suspended for a period of not less than 30 days unless otherwise provided for in federal or state law. The local school board or charter school board of directors may, on a case by case basis, modify the terms of the suspension.

##### **14 Del.C. §4112. Reporting school crimes.**

(c) Student possession of weapons and unlawful drugs. - Whenever a school employee has reliable information that would lead a reasonable person to believe that a person on school property or at a school function has on his or her person, concealed in that person's possessions, or placed elsewhere on school property:

(1) Any controlled substance prohibited by Title 16; or

(2) Any deadly weapon, destructive weapon, dangerous instrument or incendiary or explosive device as prohibited by Title 11, the school employee shall immediately report the incident to the principal, who shall conduct a thorough investigation. If the investigation verifies that good reason exists to believe that a crime has been committed, the principal shall immediately notify the appropriate police agency of the incident. If the police agency determines that probable cause exists to believe that a crime has been committed, then the principal shall file a written report of the incident with the Department of Education within 5 working days.

#### **REGULATIONS**

##### **14 DE Admin. Code §603. Compliance with the Gun Free Schools Act.**

###### **1.0 Written Policy Required**

1.1 Each school district and charter school shall have a written policy implementing the Gun-Free Schools Act (20 U.S.C. § 7961) and complying with 11 Del.C. § 1457(j) or its successor statute. At a minimum, the policy must contain the following elements:

1.1.1 A student who is determined to have brought a firearm to school, or to have possessed a firearm at school, shall be expelled for not less than one year.

1.1.2 Modification to the expulsion requirement may be made on a case by case basis by the chief school officer. Any modification to the expulsion requirement must be made in writing to the Department.

1.1.3 The definition of "Firearm" shall be the same as the meaning given to the term in the federal Gun-Free Schools Act.

**14 DE Admin. Code §611. Consortium discipline alternative programs for treatment of severe discipline problems.**

**1.0 Eligible Students**

1.1 Except as otherwise provided in this regulation, any student who is expelled by a local school district, who is subject to expulsion or who otherwise seriously violates the district discipline code shall be eligible for placement at a Consortium Discipline Alternative Program (CDAP) site. [...]

**2.0 Ineligible Students**

2.1 Any student expelled or suspended pending expulsion for behavior equivalent to a violation of the following is not eligible for, and may not be placed at a Consortium Discipline Alternative Program site.

2.1.2 11 Del.C. § 1457. Possession of a Weapon in a Safe School and Recreation Zone; class D, E, or F: class A or B misdemeanor.

## **Students with Chronic Disciplinary Issues**

### **LAWS**

**14 Del.C. §701. Authority of teachers and administrators to control the disruptive behavior of students.**

(a) As used in this chapter:

(1) "Department" means the Department of Education.

(2) "Disruptive behavior" means conduct that is so unruly, disruptive, or abusive that it seriously interferes with a school teacher's or school administrator's ability to communicate with the students in a classroom, with a student's ability to learn, or with the operation of a school or a school-sponsored activity.

(3) "Racial subgroup" means the racial and ethnic subgroups of students as defined under the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 6301 et seq., as amended, which includes African American or Black, American Indian or Alaska Native, Asian American, Native Hawaiian or other Pacific Islander, Hispanic or Latino, White or Caucasian, and Multi-Racial.

(4) "School" means a traditional public school, vocational technical school, or charter school.

(5) "Subgroup" means as subgroup is defined under the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 6301 et seq., as amended, which includes racial subgroups, economically disadvantaged students, children with disabilities, and English learners.

(b) While a student is entrusted in their care or supervision, public school teachers, and administrators have the same authority to control the behavior of the student and to discipline or punish the student as a parent, custodian, guardian, or other person similarly responsible for the care and supervision of the student except as provided in §§ 702 and 4112F of this title. The authority includes removing a student from a classroom or school-sponsored activity.

(c) When a teacher removes a student from a classroom or school-sponsored activity in an effort to control the student's disruptive behavior, an on-site school administrator may, upon a written showing of good cause, override the teacher's decision to remove the student from the classroom or school-sponsored activity. Before overriding a teacher's decision, the administrator shall strongly presume that the teacher's decision to remove the student was reasonable and necessary under the circumstances.

- (d) When a student is removed from a classroom or school-sponsored activity or is disciplined or punished pursuant to this section, the principal or the principal's designee shall afford the student appropriate due process as required by the federal and State constitutions.
- (e) When a student is removed from a classroom or school-sponsored activity, the principal or the principal's designee and the removing teacher shall determine if and when a student may be readmitted to the classroom or school-sponsored activity. If the teacher and principal or principal's designee cannot agree, the superintendent or the superintendent's designee shall make the determination.
- (f) When a teacher or school administrator removes a student from a classroom or school-sponsored activity or disciplines or punishes a student, a rebuttable presumption exists that the teacher or administrator acted reasonably, in good faith, and in accordance with State or local board of education policy. The burden of overcoming the presumption shall be upon the student.
- (g) Each local board of education shall establish, adopt, publish, and distribute to students in the district and their parents or guardians policy or standards that are consistent with the regulations developed under § 122(b)(26) of this title and include all of the following:
- (1) Specify the general circumstances under which a student may be removed from a classroom or school-sponsored activity, consistent with a teacher's and administrator's ultimate authority to determine disruptive behavior and to remove a student from a classroom or school-sponsored activity.
  - (2) Provide an explanation or examples of "disruptive behavior" set forth in paragraph (a)(2) of this section.
- (h) A district shall not establish or adopt a policy or standards that prohibit the removal of a student from a classroom or school-sponsored activity.
- (i) No teacher who purports to have acted pursuant to the teacher's rights established by this chapter shall be found liable for civil damages arising from that action unless that teacher's conduct shocks the conscience.

**14 Del.C. §1604. Treatment of severe discipline problems component.**

The Department of Education shall establish a program component which will provide alternative educational and related services for the more severe discipline problems in the public schools. This component will serve primarily secondary school students, including but not limited to: youngsters who have been expelled from regular schools, students who may be subject to expulsion, and others who have serious violations of the local school district discipline code. The Department of Education shall provide rules and regulations for the conduct of programs authorized under this section subject to the following limitations:

- (1) School districts shall make application to the Department of Education for funding to implement programs authorized under this section. Preference shall be given to applications from consortia of school districts. To the extent feasible, programs offered under this component should serve eligible pupils within a county, however, multiple sites may be operated by a single consortia of school districts within a county.
- (2) Any application submitted under this section shall specify the types and level of services to be provided and an estimate of the number of youngsters to be served. The application shall also include a budget of proposed expenditures during a fiscal year. That budget shall indicate, at a minimum, the funds being requested from appropriations authorized under this section and funds to be obtained from all other sources.
- (3) All applications submitted to the Department of Education under this section shall indicate an agreement to fund at least 30 percent of the total cost of services provided from sources of funding other than those authorized under this section.

(4) All projects funded under this section shall submit an annual evaluation report on the effectiveness of the program to the Department of Education. Such report shall incorporate the data and information specified by the Department.

(5) School districts shall be permitted to use funds collected in accordance with the provisions of Chapter 6 of this title to make tuition payments for youngsters assigned to programs authorized under this section.

(6) Nothing in this section shall prohibit a consortia of school districts from contracting for educational or related services with public or private agencies when operating programs authorized under this section.

(7) The provisions of § 4130 of this title shall not apply to youngsters enrolled in programs authorized under this section.

(8) A student 16 years of age or less who is expelled or suspended pending expulsion by a local school district or charter school shall be presumed appropriate for placement in a Consortium Discipline Alternative Program site, provided the student is not otherwise ineligible by statute or regulation for placement in such a program. The burden of establishing that a student is not appropriate for placement in a Consortium Discipline Alternative Program shall be on the local school district or charter school. Any student not shown by preponderance of evidence to be inappropriate for placement in a Consortium Discipline Alternative Program shall be placed in such a program.

#### **14 Del.C. §1605. School and district level component.**

The Department of Education shall be authorized to approve and provide financial support for programs to provide alternative educational and related services to disruptive students in the public schools. This component will serve students, in schools enrolling pupils in grades K through 12, who are causing repeated disruptions in the regular classes to which they are assigned. Services may be delivered in a variety of modes with students assigned to the specific programs for short- or long-term assistance. Programs authorized under this section could also serve as a transition for youngsters returning from programs operated under the provisions of § 1604 of this title. The Department of Education shall provide rules and regulations for the conduct of programs authorized under this section subject to the following limitations:

(1) School districts shall be permitted to use personnel authorized by any of the provisions of this title to establish alternative educational and related service programs for disruptive students. Such personnel shall continue to be paid in accordance with salary schedules specified in Chapter 13 of this title.

(2) In the event that a school district uses personnel authorized under various sections of this title to establish and operate a program for disruptive students, the district may elect to employ 2 service paraprofessionals or 2 instructional paraprofessionals, paid in accordance with § 1324 of this title, in lieu of 1 staff member paid in accordance with § 1305 of this title.

(3) Any school which either enrolls pupils in at least 2 of the grades 3 through 12 or enrolls pupils solely in 1 or more of grades K through 3, and which establishes a program for disruptive students in accordance with the provisions of this section and the rules and regulations of the Department of Education may make application to the Department for an incentive grant to help defray the cost of operating such program. No school may qualify for more than 1 incentive grant per fiscal year, and all applications for such grants must have the prior approval of the board of education of the school district in which the applicant school is located. The maximum dollar value of an incentive grant shall be specified in the annual budget appropriation bill. Funds available to the Department of Education shall be allocated on a competitive basis if in any fiscal year more schools are eligible for funding than there are funds appropriated for the incentive grants.



## **REGULATIONS**

### **14 DE Admin. Code §609. District and school based intervention services.**

#### **1.0 Provision of Services**

Each school district shall provide services for students whose behavior disrupts the classroom setting and creates distractions that impede the learning process, but who are not eligible for placement in an alternative program pursuant to 14 DE Admin. Code 611. School districts may offer such services based on the identified needs of the district and its individual schools, subject to the requirements of this regulation.

#### **2.0 Application for Funding**

2.1 Any school district requesting an incentive or supplemental grant to provide intervention services shall apply for such funds using the LEA Consolidated Application process provided by the Department of Education.

2.2 Any incentive or supplemental grant approved as part of the LEA Consolidated Application process shall be in the amount appropriated for that purpose by law.

#### **3.0 Student Population to be Served**

Services funded under this regulation may be provided to any student in grades K to 12, subject to the terms of the district's approved LEA Consolidated Application. Notwithstanding any of the provisions to the contrary, IDEA-identified students with disabilities shall be served pursuant to the provisions in 14 DE Admin. Code 925 and students with disabilities identified under Section 504 of the Rehabilitation Act shall be served in conformity with 34 C.F.R. Part 104.

#### **4.0 School Based Intervention Programs**

4.1 If a district, through its LEA Consolidated Application, provides a School Based Intervention Program as part of the services provided to disruptive students, such Program shall meet the following requirements:

4.2 A School Based Intervention Program shall include both short term and long term intervention strategies. Such strategies may include character education, short or long term counseling to improve behavior which impacts educational performance, and methods to identify the need to refer students for additional services either within the district or to other agencies. The Program shall also include support services to provide a smooth transition for students who are returning to their regular school from a Consortium Discipline Alternative Program or from a Department of Services to Children, Youth and their Families (DSCYF) setting.

4.3 The decision to place a student in the School Based Intervention Program shall be made by the student's Intervention Team. The Intervention Team shall include the building principal or assistant principal, school nurse, counselor, social worker (if the student receives social work services), and a teacher familiar with the student. Other individuals, including parents, guardians or Relative Caregivers, may be invited as appropriate.

4.4 When placing an IDEA-identified student with a disability in a School Based Intervention Program, the Intervention Team and a student's IEP team may be the same as long as the membership of the Intervention Team also meets the requirements of 14 DE Admin. Code 925. When placing a student with a disability identified under Section 504 of the Rehabilitation Act, the Intervention Team may be the same as a multidisciplinary team authorized to make placement decisions as long the Intervention Team also meets the requirements of 34 C.F.R. 104.35

#### **5.0 Evaluation of Services**

Any local school district receiving a grant pursuant to this regulation shall submit an annual evaluation report on the effectiveness of its District and School Based Intervention Services. Such report shall be

submitted as part of the LEA Consolidated Application process and shall conform to content and format standards.

**14 DE Admin. Code §611. Consortium discipline alternative programs for treatment of severe discipline problems.**

1.1 Except as otherwise provided in this regulation, any student who is expelled by a local school district, who is subject to expulsion or who otherwise seriously violates the district discipline code shall be eligible for placement at a Consortium Discipline Alternative Program (CDAP) site.

1.2 Subject to Section 11.0, local school districts shall place an eligible student at a Consortium Discipline Alternative Program site if the district board:

1.2.1 Has expelled the student for a violation of the district's discipline code or, determined that the student has been suspended for engaging in conduct that could result in expulsion and has not required the student to participate in other options such as behavioral contracts or counseling or, determined that the student has exhibited such severe discipline problems that expulsion is imminent.

1.3 School districts may place a student in a Consortium Discipline Alternative Program for classroom or school environment disruptions only if:

1.3.1 Such disruptions are chronic and repetitive; and

1.3.2 The student has participated in all available School Based Intervention Programs pursuant to 14 DE Admin. Code 609 and continues to routinely and seriously disrupt the classroom and impede the learning of other students.

**14 DE Admin. Code §616. Uniform due process procedures for alternative placement meetings and expulsion hearings.**

7.0 Assignment to an Alternative Program

7.1 Procedures for Student Referral

7.1.1 Criteria for student referral to an Alternative Placement.

7.1.1.4 A Principal may refer a student for Alternative Placement in conjunction with chronic disruptive behaviors which result in Repeated Violations of the Student Code of Conduct after all school-based best practice interventions have been put into place for said student. This may include, but is not limited to, counseling services, the development and implementation of a behavior support or modification plan, mentoring, referral to mediation, and participation in an available In-School Alternative Program.

## **Chronic Absenteeism and Truancy**

### **LAWS**

**14 Del.C. §203. Special programs.**

The Department with the approval of the State Board of Education and the school board of any local reorganized school district, either separately or jointly, may establish special programs for children who are in need of education not provided for in regular classes or schools. Such special programs may include, but are not limited to, bilingual programs, programs for persons who are truant or insubordinate or programs for pregnant students.

**14 Del.C. §411. Pupils suspended, expelled, or truant in district of residence.**

If a child for whom an application has been submitted pursuant to this chapter has been suspended or expelled, or has been absent from school without a valid excuse for more than 15 school days during a

school year, in the district of residence, the board of the receiving district may, in its sole discretion, refuse to consider the application or refuse to approve the application, or refuse to enroll the child in the receiving district until the child has been reinstated in the district of residence, provided, however that nothing in this section shall be construed to enlarge upon the authority of any district to accept for re-enrollment any student who has been expelled from a school district in this State, as such authority is limited by the provisions of § 4130 of this title. "Valid excuse" shall have the same meaning as in § 2721 of this title.

**14 Del.C. §2702. Compulsory attendance requirements; evaluation of readiness; exit interview.**

(a) Except as otherwise provided, the following provisions are applicable to school attendance in this State:

(3) Every student who is enrolled in a public school of this State shall attend the school each day of the minimum school term and any academic improvement activities required by § 153 of this title. A student who has been absent from school without a valid excuse for more than 3 school days in a school year is a truant. A truant and the parent of a truant are subject to the administrative procedures and court proceedings set out in subchapter II of this chapter.

**14 Del.C. §2721. Definitions.**

In this chapter:

(7) "Truant" means a student who has been absent from school without valid excuse for more than 3 school days during a school year.

**14 Del.C. §2722. Absences and truancy.**

(a) Subject to the rules and regulations of the local school board, pupils enrolled in the free public schools may be excused by the superintendent of schools or persons authorized by the superintendent. Pupils enrolled in charter schools may be excused by the principal of the school or persons authorized by the principal, subject to rules and regulations promulgated by the board of directors of the charter school.

(b) No pupil who could otherwise legally fail to attend school pursuant to § 2702(a) of this title may do so without the written consent of such person or persons having legal control of that pupil.

**14 Del.C. §2723. Responsibility of police officers.**

(a) Any pupil under the age of 16 identified by a police officer as being off school property without official authorization may be returned to that pupil's home school.

(b) Any pupil under the age of 16 identified by a police officer as being off school property without official authorization may be detained by the police for a period not to exceed 2 hours for the purpose of notification of parent or guardian. This detention may be within the police station but not in a criminally confined area.

**14 Del.C. §2724. Notification to parents and students.**

At the beginning of a school year each school district or public school shall notify each student and the parent of each student of the school attendance requirements of this Code, including the procedures and penalties applicable to truancy. The school district or school may determine the form of the notification.

**14 Del.C. §2725. Absences without excuse; truancy conferences.**

(a) If a student has been absent from school without a valid excuse 1 or more days, the principal of the school may take such action as the principal considers appropriate.

(b) If a student is truant, the principal shall schedule a truancy conference with the student, the student's parent and the principal pursuant to § 2726 of this title. The conference may be attended by other persons as the principal may include.

(c) Following a truancy conference the school shall decide whether or not to file a charge against the parent for a violation of § 2702 of this title; provided however, that the principal shall refer the case for prosecution following the twentieth day of unexcused absence by a student during the school year, in compliance with § 2702(d) of this title, and may refer the case before the twentieth day of unexcused absence if the principal determines it is appropriate to do so.

(d) The fact that a student or student's parent attended or failed to attend a truancy conference does not bar the principal from filing a complaint with the Justice of the Peace Court.

**14 Del.C. §2726. Procedure for truancy conferences.**

The provisions of § 4122 of this title shall apply to truancy conferences. The principal shall determine the date, time and place of the conference and shall give all participants notice at least 1 week prior to the conference. In conducting a truancy conference, the principal may exclude any person, including a parent or a student, from the conference or part of a conference.

**14 Del.C. §2727. Notice of violation and compliance.**

No person shall be prosecuted for violation of § 2702 of this title if that person, within 3 days from the time that the person is notified by the superintendent of schools or persons authorized by the superintendent, presents an excuse in writing satisfactory to such superintendent of schools, and complies with the requirements of such § 2702 of this title. The mailing of a notice to the usual address of the offending party shall be sufficient notification.

**14 Del.C. §2728. Procedure for court adjudication.**

(a) When the school charges a parent or a student with a violation of § 2702 of this title, the school shall file a written complaint in the court. The complaint shall be on such form(s) as the court may require. The school shall be the complainant and the parent or the student shall be the defendant. The court must determine whether probable cause exists to issue a warrant or summons against the person charged. When there is probable cause to find that a student is truant, probable cause to issue a warrant or summons for a parent shall exist when the parent is named as the parent or guardian on the student's school records and the parent resides in Delaware.

**14 Del.C. §2730. Failure to attend; penalties.**

(a) The school may file a civil charge of truancy against the student in the Justice of the Peace Court if:

- (1) The student is age 12 or older; and/or
- (2) The Court determines that a parent who is charged with violating § 2702 of this title has a valid affirmative defense under § 2729(b) of this title.

(b) The court shall determine whether a preponderance of the evidence establishes that the student has violated § 2702 of this title.

(c) If the Court determines the student has violated § 2702 of this title, it shall adjudicate the student a truant and may order the following remedial dispositions:

- (1) Community service;
- (2) Counseling;
- (3) Substance abuse evaluation and treatment;
- (4) Mental health evaluation and treatment;

- (5) A curfew with hours set by the court;
- (6), (7) [Repealed.]
- (8) Prohibition of the student's participation in or attendance at any extra-curricular activity or social event which is an official school event or is sponsored by the school or held on school property;
- (9) A recommendation that the student enroll in the school in alternative educational and related services in accordance with Chapter 16 of this title; and
- (10) Such other action as is permitted by statute or by court rule.

**14 Del.C. §2731. Enforcement of court order.**

- (a) The court with jurisdiction over the matter shall retain jurisdiction until all terms of the court's order have been complied with regardless of any change in the student's age, marital status or choice of educational source or location.
- (b) Notwithstanding any provision of this Code to the contrary, if it is alleged that a student has not complied with the terms of the court's order, the noncompliant student may be charged with criminal contempt pursuant to § 1271 of Title 11, which shall, in the first instance, be brought in the Family Court.
- (c) A juvenile against whom criminal contempt proceedings pursuant to this section and § 1271 of Title 11 have been initiated shall have the right to counsel at all stages.

**14 Del.C. §2732. Appeals.**

- (a) A parent convicted within the Justice of the Peace Court of a violation of § 2702 of this title may appeal to the Court of Common Pleas in the county in which the judgment was given. The appeal shall be filed within 15 days from the date of conviction. On appeal the Court of Common Pleas shall make a de novo determination. [...]
- (c) A student who has been adjudicated truant within the Justice of the Peace Court pursuant to § 2730 of this title may appeal to the Family Court in the county in which the adjudication occurred. The appeal shall be filed within 15 days of the date of the adjudication. On appeal the Family Court shall make a de novo determination based on the record below.
- (d) No appeal of the adjudication of truancy or truancy-related contempt pursuant to subsection (c) of this section shall stay execution of the remedial disposition unless a judge of the Family Court orders a stay.

**14 Del.C. §2733. Jurisdiction; venue.**

- (a) The Justice of the Peace Court and the Family Court shall have concurrent jurisdiction of complaints filed pursuant to this subchapter.
- (b) All complaints under this subchapter shall be filed in a Justice of the Peace Court in the county where the school the child is required to attend is located or in the county in which the office of the school district which contains the child's school is located.
- (c) The matter shall proceed within the Justice of the Peace Court unless that Court determines, upon the complaint's filing, that the matter shall be transferred to the Family Court due to the existence of any of the following conditions:
  - (1) Pending delinquency proceedings involving the child;
  - (2) Pending civil proceedings involving a determination of the child's best interests pursuant to § 722 of Title 13;
  - (3) Pending proceedings with involvement by the Department of Services for Children, Youth and Their Families with the child's family; or
  - (4) Any other condition exists related to the child that reasonably warrants transfer to Family Court.

(d) In the event that a student withdraws from school for any reason other than age and does not re-enroll in another public school, the Family Court or Justice of the Peace Court, in its discretion, may retain jurisdiction for the purpose of ensuring that the student's alternative educational environment was not an attempt to avoid the compulsory attendance requirements of § 2702 of this title.

## **REGULATIONS**

### **14 DE Admin. Code §615. School attendance.**

#### **1.0 Required Attendance Policy**

Each school district and charter school shall have an attendance policy that complies with 14 Del.C. Ch. 27 and which defines and describes the district's or charter school's rules concerning attendance for students K to 12.

#### **2.0 Distribution of Attendance Policy**

2.1 Each district or charter school shall distribute and explain these policies to every student at the beginning of each school year.

2.2 Each district or charter school shall distribute and explain these policies to each student enrolling or re enrolling during the school year.

2.3 Each district or charter school shall post the attendance policy on its website and notify a parent, guardian or relative caregiver of each student in writing where this policy can be accessed. A hard copy shall be provided to a parent, guardian or relative caregiver upon request.

#### **3.0 Reporting Requirements and Timelines**

3.1 Each public school district or charter school shall have an electronic copy of its current attendance policy on file with the Department of Education.

3.2 Each public school district or charter school shall provide an electronic copy of any revised attendance policy within ninety (90) days of such revision(s) regardless of whether said revisions were made as a result of changes to federal, state or local law, regulations, guidance or policies.

## **Substance Use**

## **LAWS**

### **14 Del.C. §2730. Failure to attend; penalties.**

(c) If the Court determines the student has violated § 2702 of this title, it shall adjudicate the student a truant and may order the following remedial dispositions:

(3) Substance abuse evaluation and treatment.

### **14 Del.C. §3801. Declaration of purpose.**

The General Assembly finds and declares that a substantial drug and alcohol trafficking and abuse problem exists in this State among school age children, in schools and on school campuses, parks and playgrounds. It is the purpose of this chapter to support increased efforts by local law enforcement agencies, working in conjunction with school districts and with state and local drug and alcohol prevention agencies, to suppress trafficking, and to prevent drug and alcohol abuse among school-age children in schools and on school campuses, through the development of innovative and model programs jointly undertaken by local law-enforcement agencies and school districts. Further, it is the intent of the General Assembly to establish a program of financial and technical assistance for local law enforcement and school districts, and to formulate a joint policy of pursuing both demand reduction (through education and prevention programs), and supply reduction (through law enforcement).

#### **14 Del.C. §3802. Definitions.**

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (1) "Division" shall mean the Division of Substance Abuse and Mental Health.
- (2) "Enhanced apprehension, prevention and education efforts" shall mean projects and programs which do not compete with, but which supplement and improve currently existing substance abuse prevention and education programs.
- (3) "Entity" shall mean any committee, agency or group approved by the Division; any law-enforcement committee, agency or group approved by the Department of Safety and Homeland Security; or any committee, agency or group composed of public school teachers and/or administrators.

#### **14 Del.C. §3803. Division of substance abuse and mental health.**

(a) The Division of Substance Abuse and Mental Health shall allocate and award all funds appropriated for any purposes set forth in § 3801 and elsewhere in this chapter. Such funds shall be awarded only to programs or projects, undertaken jointly by a law-enforcement entity and a local school district or other public school entity, to prevent and/or suppress substance abuse and the trafficking of prohibited or controlled substances in the public schools. All applications for such funds shall be applications made jointly by the school and law-enforcement entities involved in the proposed project.

(b) In the allocation and awarding of funds to joint law enforcement and public school recipients, the Division shall obtain the comments and recommendations of the State Drug-free School Advisory Committee. All allocation and awarding of funds by the Division shall be in accordance with the Administrative Procedures Act [Chapter 101 of Title 29], and with those guidelines promulgated by the State Drug-free School Advisory Committee which do not conflict with existing state laws.

(c) Each application shall be accompanied by a fiscal note, prepared by the joint applicants, which sets forth all anticipated first-year costs and the anticipated total costs of the project or program. The Division may return any application to the applicant with a request that any or all expenses be more fully set out, together with the applicant's explanations or reasons for each projected cost or expense.

#### **14 Del.C. §3804. State drug-free school advisory committee.**

(a) All criteria for the rating of applications for funds under this chapter shall be developed by the State Drug-free School Advisory Committee. The State Drug-free School Advisory Committee shall be composed of 16 members appointed by the Governor: 1 police chief; 1 sheriff; 1 prosecutor from the State Department of Justice who specializes in drug and/or alcohol cases; 1 attorney primarily engaged in criminal defense; 1 person from each county appointed by an active parent group or community-based group concerned primarily with drug and/or alcohol problems; 1 representative of the Division of Substance Abuse and Mental Health; 1 county drug and/or alcohol program administrator; and a permanent, full-time member of a drug treatment clinic or office, public or private. In addition, membership shall include the Attorney General or the Attorney General's designee; 4 members who are professional employees of the Department of Education, 1 of whom shall be the Secretary of Education; and a drug and/or alcohol prevention professional employed by the Department of Education. The Committee shall review applications made to the Division for those funds which are awarded pursuant to this chapter, and shall recommend approval for those applications which the Committee deems appropriate, and which it deems are consistent with the guidelines and procedures established pursuant to this chapter. The Division shall not approve nor release any funds until approval under § 3805(b) of this title is first obtained.

(b) The State Drug-free School Advisory Committee shall develop specific guidelines and procedures which shall set forth the terms and conditions upon which grants of funds are made. Funds disbursed under this chapter shall not be used for the acquisition of equipment.

(c) Funds disbursed under this chapter shall not be used to pay informants for information on drug and/or alcohol offenders. Not more than 10 percent of the total amount of funds disbursed under this chapter shall be used for administrative costs.

#### **14 Del.C. §3805. Local drug-free school advisory committees.**

(a) A local drug-free school advisory committee may be established and appointed by each local board of education. Such committee may be either a newly created committee, or an existing local drug and alcohol abuse committee formerly established by the county, municipality or school district. Although the committee may have additional members, its basic membership shall be composed of the following residents of the district or area affected:

- (1) One local law enforcement officer;
- (2) An administrator or teacher, employed by the local school district, who has expertise in drug and alcohol programs;
- (3) One administrator and 1 teacher from the school or school district which has direct involvement in the program;
- (4) One parent who has a son or daughter enrolled in the school;
- (5) Three high school students;
- (6) One person who is a permanent full-time employee of the state, county or municipality, and whose duties primarily involve drug education or treatment;
- (7) Any other person who is involved, by employment or as a volunteer, in any drug and/or alcohol prevention program.

(b) No project or program, financed in whole or in part with funds under this chapter, shall begin in any school until such project or program has first received the approval of the local drug-free school advisory committee.

#### **14 Del.C. §3806. Utilization of funds.**

(a) Funds shall be awarded primarily for projects undertaken jointly by the school district or other public school entity, and a law-enforcement entity. In participating in any joint application for the funds, the public school entity shall consult with the superintendent of each affected school. Any funds disbursed under this chapter are supplemental to and shall not supplant local funds which would, in the absence of this chapter, be otherwise available to suppress and prevent drug and alcohol abuse among school age children, or which otherwise would be used to curtail drug and alcohol trafficking in and around schools, parks and playgrounds.

(b) When applying for funds under this chapter, the local law-enforcement entity and the public school entity may jointly enter into those agreements between themselves which would allow and facilitate the administrative, fiscal and operational responsibilities created by their joint project or program.

(c) Funds disbursed under the provisions of this chapter shall be utilized primarily for enhanced apprehension, prevention, and education efforts, and for obtaining material and information resources relating to drug and alcohol abuse and drug trafficking in and around schools, parks and playgrounds. Enhanced apprehension, prevention and education efforts shall include, but are not limited to:

- (1) Drug and alcohol trafficking intervention programs;
- (2) School and classroom oriented programs, each of which shall utilize a tested drug and alcohol education curriculum that provides in-depth and accurate information on drugs and alcohol. Such



programs may include the participation of local law-enforcement agencies and/or qualified drug and alcohol use prevention specialists. Each such program shall be designed to increase, in both teachers and students, an awareness of the dangers of drugs and alcohol;

(3) Family-oriented programs aimed at preventing drug and alcohol abuse, which programs may include the participation of any community-based organization which is experienced in the successful operation of a family-oriented program;

(4) Development and distribution of appropriate written and audio-visual aids for the training of persons not otherwise trained or experienced in the handling of drug and alcohol-related problems and offenses within the public schools;

(5) Development of prevention and intervention programs for elementary school teachers and students, including utilization of existing prevention and intervention programs, where appropriate;

(6) Development of a coordinated intervention system that identifies "at-risk" students, and students with chronic drug and alcohol abuse problems.

#### **14 Del.C. §3807. State board of education; Department of public safety.**

The Department of Safety and Homeland Security and the Department of Education shall both have the power to monitor and evaluate the projects and programs under this chapter, and to make comments and suggestions to the Division.

#### **14 Del.C. §4112. Reporting school crimes.**

(c) Student possession of weapons and unlawful drugs. - Whenever a school employee has reliable information that would lead a reasonable person to believe that a person on school property or at a school function has on his or her person, concealed in that person's possessions, or placed elsewhere on school property:

(1) Any controlled substance prohibited by Title 16; or

(2) Any deadly weapon, destructive weapon, dangerous instrument or incendiary or explosive device as prohibited by Title 11, the school employee shall immediately report the incident to the principal, who shall conduct a thorough investigation. If the investigation verifies that good reason exists to believe that a crime has been committed, the principal shall immediately notify the appropriate police agency of the incident. If the police agency determines that probable cause exists to believe that a crime has been committed, then the principal shall file a written report of the incident with the Department of Education within 5 working days.

#### **14 Del.C. §4117. Substance abuse.**

(a) Each school district shall designate an administrator in every school as the person responsible for reporting, to parents and/or law enforcement agencies, any violation and/or problems relating to the abuse of controlled substances. Such administrator shall not be liable under the laws of this State for any act or omission committed by the administrator in the performance of that administrator's duties and responsibilities under this section.

(b) No administrator having reporting responsibilities under this section shall be required to report any substance abuse violation and/or problem to a parent if such person, being the principal of the school, reasonably believes that a parent or parents are a cause of or are involved in the violation and/or problem; nor shall any other administrator, having reporting responsibilities under this section, be required to report any substance abuse violation and/or problem to a parent, if such administrator and the principal of the school both believe that a parent or parents are a cause of or are involved in the violation or problem.

### **16 Del. C. §2205. Duties of Office.**

The Office of Substance Abuse Services, as a component of the Department of Health and Social Services, shall:

- (2) Cooperate with the Department of Education, law-enforcement officials, and other public and private agencies to assist with the development and dissemination of substance abuse prevention materials for use at all levels of school education.

## **REGULATIONS**

### **14 DE Admin. Code §612. Possession, use or distribution of drugs and alcohol.**

#### **1.0 Purpose**

The purpose of this regulation is to outline the minimum requirements to be included in all public school district and charter school policies on the Possession, Use, or Distribution of Drugs and Alcohol.

#### **2.0 Definitions**

The following words and terms, when used in this regulation, shall have the following meaning unless the context clearly states otherwise:

"Alcohol" means alcohol or any alcoholic liquor capable of being consumed by a human being, as defined in 4 Del.C. § 101 including alcohol, spirits, wine and beer.

"Designated Caregiver" means, pursuant to 16 Del.C. § 4902A(5), a person who is at least twenty-one (21) years of age unless the person is the parent or legal guardian of a minor who is a qualifying patient; has agreed to assist with a patient's medical use of marijuana; has not been convicted of an excluded felony offense; and assists no more than five (5) qualifying patients with their medical use of marijuana.

"Distribute", "Distributing" or "Distribution" means the transfer or attempted transfer of Alcohol, a Drug, a Drug Like Substance, or Drug Paraphernalia to any other person with or without the exchange of money or other valuable consideration.

"Drug" means any controlled substance or counterfeit substance as defined in 16 Del.C. § 4701 including, for example, narcotic Drugs such as heroin or cocaine, amphetamines, anabolic steroids, and marijuana, and shall include any prescription substance which has been given to or prescribed for a person other than the student in whose possession it is found.

"Drug Like Substance" means any noncontrolled and nonprescription substance capable of producing a change in behavior or altering a state of mind or feeling, including, for example, some over the counter cough medicines, certain types of glue, caffeine pills and diet pills. The definition of Drug Like Substance does not include tobacco or tobacco products which are governed by 14 DE Admin. Code 877 Tobacco and Smoking Policy.

"Drug Paraphernalia" means all equipment, products and materials as defined in 16 Del.C. § 4701 including, for example, roach clips, miniature cocaine spoons and containers for packaging Drugs.

"Hand Sanitizer" means a commercially available health care topical antiseptic product with at least 60% ethanol or 70% isopropyl alcohol content.

"Look Alike Substance" means any noncontrolled substance which is packaged so as to appear to be, or about which a student makes an express or implied representation that the substance is, a Drug or a noncontrolled substance capable of producing a change in behavior or altering a state of mind or feeling.

"Medical Marijuana Oil" means as defined in 16 Del.C. § 4902A(10).

"Nonprescription medication" means any over the counter medication that can be sold legally without a prescription. This definition may include a Drug Like Substance but excludes Hand Sanitizer.

"Possess", "Possessing" or "Possession" means that a student has on the student's person, in the student's belongings, or under the student's reasonable control by placement of and knowledge of the whereabouts of, Alcohol, a Drug, a Drug Like Substance, a Look Alike Substance, or Drug Paraphernalia.

"Prescription medication" means a legal drug that has a written order for a student by a licensed health care provider licensed to prescribe medication.

"School Environment" means within or on school property, and at school sanctioned or supervised activities, including, for example, on school grounds, on school buses, at functions held on school grounds, at extra-curricular activities held on and off school grounds, on field trips and at functions held at the school in the evening.

"Use" means that a student is reasonably known to have ingested, smoked or otherwise assimilated Alcohol, a Drug or a Drug Like Substance, or is reasonably found to be under the influence of such a substance.

### 3.0 General Provisions

3.1 The following provisions shall apply to all public school district and charter schools:

3.1.1 The possession, use or distribution of Alcohol, a Drug, a Drug Like Substance, a Look Alike Substance and Drug Paraphernalia are prohibited within the School Environment, unless medically necessary.

3.1.2 Student lockers are the property of the school and may be subjected to search at any time with or without reasonable suspicion.

3.1.3 Student motor vehicle use to and in the School Environment is a privilege which may be extended by school districts or charter schools to students in exchange for their cooperation in the maintenance of a safe school atmosphere. Reasonable suspicion of a student's use, possession or distribution of Alcohol, a Drug, a Drug Like Substance, a Look Alike substance or Drug Paraphernalia in the School Environment, may result in the student being asked to open an automobile in the School Environment to permit school authorities to look for such items. Failure to open any part of the motor vehicle on the request of school authorities may result in the police being called to conduct a search and will result in loss of the privilege to bring the vehicle on campus.

3.1.4 All Alcohol, Drugs, Drug Like Substances, Look Alike Substances and Drug Paraphernalia found in a student's possession shall be turned over to the principal or designee, and be made available, in the case of a medical emergency, for identification. All substances shall be sealed and documented, and, in the case of substances covered by 16 Del.C. Ch. 47, turned over to police as potential evidence.

### 4.0 Requirement of Each School District and Charter School to have a Policy

4.1 Each school district and charter school shall have a policy on file and update it periodically. The policy shall include, at a minimum, the following:

4.1.1 A system of notification of each student and their parent, guardian or relative caregiver at the beginning of the school year, of the state and district policies and regulations. In addition, a system for the notification of each student and their parent, guardian or relative caregiver whenever a student enrolls or re enrolls during the school year of the state and district policies and regulations.

4.1.2 A statement that state and district or charter school policies shall apply to all students, except that with respect to children with disabilities, applicable federal and state laws will be followed.

4.1.3 A written policy which sets out procedures for reporting incidents to police authorities, parents, guardians or relative caregivers and to the Department of Education, while maintaining confidentiality.

4.1.4 A written policy on how evidence is to be kept, stored and documented, so that the chain of custody is clearly established prior to giving such evidence over to the police.

4.1.5 A written policy on search and seizure.

4.1.6 A program of assistance for students with counseling and referral to services as needed.

4.1.7 A policy in cases involving a Drug Like Substance or a Look Alike Substance for establishing that the student intended to use, possess or distribute the substance as a Drug.

4.1.8 A policy which establishes how Prescription medications and Nonprescription medications shall be handled in the School Environment and when they will be considered unauthorized and subject to these state and local policies.

4.1.9 A policy which sets out the conditions for return after expulsion for Alcohol or Drug infractions.

4.2 Notwithstanding any of the foregoing to the contrary, all policies adopted by public school districts or charter schools relating to the possession or use of Drugs shall permit a student's discretionary use and possession of an asthmatic quick relief inhaler with an individual prescription label, an autoinjectable epinephrine with individual prescription label, or an insulin pump for continuous subcutaneous insulin infusion ("insulin pump") or Hand Sanitizer; provided, nevertheless, that the student uses the inhaler, autoinjectable epinephrine, or an insulin pump pursuant to prescription or written direction from a state licensed health care practitioner; a copy of which shall be provided to the school district or charter school; and further provided that the parents or legal custodians of such student provide the school district or charter school with written authorization for the student to possess and use the inhaler, autoinjectable epinephrine, or an insulin pump at such student's discretion or under the school nurse's supervision, together with a form of release satisfactory to the school district or charter school releasing the school district or charter school and its employees from any and all liability resulting or arising from the student's discretionary use and possession of the inhaler, autoinjectable epinephrine, or an insulin pump, and further provided that the school nurse may impose reasonable limitations or restrictions upon the student's use and possession of the inhaler, autoinjectable epinephrine, or an insulin pump based upon the student's age, level of maturity, behavior, or other relevant considerations.

4.2.1 Parents or legal custodians shall not be required to provide or sign a form of release where the student's use and possession of an asthmatic quick relief inhaler, autoinjectable epinephrine, or insulin pump is determined by the student's IEP or Section 504 Team to be necessary for the student's educational placement.

4.2.2 Except as provided for in a student's Section 504 Plan or IEP, the school nurse may not unilaterally impose limitations or restrictions on a student's use and possession of an asthmatic quick relief inhaler, autoinjectable epinephrine, or an insulin pump if a Section 504 or IEP Team has determined the use of the medication is necessary for the student's educational placement.

(For students who use prescribed asthmatic quick relief inhalers, autoinjectable epinephrine, or an insulin pump for continuous subcutaneous insulin therapy or Hand Sanitizer, see 14 DE Admin. Code 817, Administration of Medications and Treatments.)

4.3 A Designated Caregiver may possess for the purpose of administering and may administer to a minor qualifying patient Medical Marijuana Oil in a school bus and on the grounds or property of the preschool, or primary or secondary school in which a minor qualifying patient is enrolled. The Designated Caregiver shall not be a school nurse or other school employee hired or contracted by a school unless he or she is a parent or legal guardian of the minor qualifying patient, and said parent or legal guardian possesses no more than the number of doses prescribed per day of Medical Marijuana Oil which is kept at all times on their person.

## 5.0 Reporting Requirements and Timelines

5.1 Each local school district and charter school shall have an electronic copy of its current possession, use and distribution of Drugs and Alcohol policy on file with the Department of Education.

5.2 When a local school district or charter school revises its possession, use, and distribution of Drugs and Alcohol policy, it shall notify the Department of Education of the revised policy within thirty (30) days of the revision, even if the revision was made because of changes in federal, state or local law, regulations, guidance or policies.

#### **14 DE Admin. Code §851. K to 12 comprehensive health education program.**

2.1 Each school district and charter school shall have a sequential, skill-based K to 12 Comprehensive Health Education Program based on the Delaware Health Education Standards. The program shall establish a foundation of understanding the relationship between personal behavior and health outcomes, and shall include at a minimum the following:

2.1.7 Inclusion of an Evidence-based tobacco, alcohol, drug and interpersonal violence prevention program. Promising Practices may be used to supplement instruction.

2.1.7.1 The Department shall prepare and distribute on its website a list of Evidence-based and Promising Practices for tobacco, alcohol, drug, and interpersonal violence prevention programs and resources that may be used by school districts or charter schools.

2.1.7.2 A description of the method or methods used to implement and review for the effectiveness of the program or programs shall be reported to the Department no later than August 2021.

#### **14 DE Admin. Code §877. Tobacco and smoking policy.**

##### **1.0 Purpose**

1.1 The purpose of this regulation is to specify for district and charter schools the elements of a required Tobacco and Smoking Policy, including specifying areas where the policy is in effect, and outlining reporting requirements and timelines.

1.2 This regulation aligns with 16 Del.C., Chapter 29, Delaware's Clean Indoor Air Act, and 11 Del.C., Chapter 5, Subchapter V.

2.0 Definitions The following words and terms, when used in this regulation, have the following meaning unless the context clearly indicates otherwise:

"Electronic Smoking Device" means any product containing or delivering nicotine or any other similar substance intended for human consumption that can be used by a person to simulate Smoking through inhalation of vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor or as this term may be amended by 16 Del.C. § 2902.

"Smoking" means:

- a. The burning of a lighted cigarette, cigar, pipe or any other matter or substance that contains tobacco; or
- b. The use of an Electronic Smoking Device which creates an aerosol or vapor, in any manner or in any form or as this term may be amended by 16 Del.C. § 2902.

"Tobacco Product" means:

- a. Any product that is made from or derived from tobacco or that contains nicotine, including: cigarettes, cigars, pipe tobacco, hookah tobacco, chewing tobacco, snuff, snus, or smokeless tobacco and is intended for human consumption by any means including Smoking, heating, chewing, absorbing, dissolving, inhaling, or ingesting as this term may be amended by 11 Del.C. § 1115.; or
- b. A component or accessory used in the consumption of a Tobacco Product, including filters, rolling papers, and pipes or as this term may be amended by 11 Del.C. § 1115.

Tobacco Product does not mean a drug, device, or combination product authorized for sale by the United States Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301. et seq.) or as this term may be amended by 11 Del.C. § 1115.

"Tobacco Substitute" means:

- a. An Electronic Smoking Device employing a mechanical heating element, battery, or circuit to produce aerosol or vapor for inhalation into the body of an individual or as this term may be amended by 11 Del.C. § 1115., or
- b. A liquid used in a device under paragraph a. above, including liquids that contain nicotine and liquids that do not contain nicotine or as this term may be amended by 11 Del.C. § 1115.

Tobacco Substitute does not mean a drug, device, or combination product authorized for sale by the United States Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301. et seq.) or as this term may be amended by 11 Del.C. § 1115.

### 3.0 Required Policy

3.1 To improve the health of students, school personnel, and visitors, each school district and charter school in Delaware shall have a Tobacco and Smoking Policy which at a minimum:

3.1.1 Prohibits smoking and the use of or distribution of tobacco products and electronic smoking devices in school buildings, on school grounds, in school leased or owned vehicles, even when they are not used for student purposes, and at all school affiliated functions.

3.1.2 Includes procedures for communicating the policy to students, school staff, parents, guardians or relative caregivers, families, visitors and the community at large.

3.1.3 Makes provisions for or refers individuals to voluntary cessation education and support programs that address the physical and social issues associated with nicotine addiction.

### 4.0 The Tobacco and Smoking Policy Shall Apply to

4.1 Any building, property or vehicle leased, owned or operated by a school district, charter school or assigned contractor.

4.1.1 School bus operators under contract shall be considered staff for this policy.

4.2 Any private building or other property including automobiles or other vehicles used for school activities when students and staff are present.

4.3 Any non-educational groups utilizing school buildings or other educational assets.

4.4 Any individual or a volunteer who supervises students off school grounds.

### 5.0 No School or School District Property May Be Used for the Advertising of any Tobacco Product, Tobacco Substitute or Electronic Smoking Device

### 6.0 Reporting Requirements and Timelines

6.1 Each school district and charter school shall have an electronic copy of its current Tobacco and Smoking Policy on file with the Department of Education.

6.2 Each school district and charter school shall provide an electronic copy of any Tobacco and Smoking Policy within ninety (90) days of such revisions regardless of whether said revisions were made as a result of changes to federal, state or local law, regulations, guidance or policies.

## Gang-related Activity

### LAWS

#### **14 Del.C. §4162. Child safety awareness, prevention, and other nonacademic trainings.**

(a) Each school district and charter school shall require its employees to receive 12.5 hours of training every 3 years consisting of all of the following:

(2) Three hours of a school bullying prevention and criminal youth gang detection training program established under § 4164(a) of this title.

#### **14 Del.C. §4164. School bullying awareness and prevention; criminal youth gang detection.**

(a) School bullying prevention and criminal youth gang detection training program. - The Department of Justice and the Department of Education, in collaboration with law-enforcement agencies, the Delaware State Education Association, the Delaware School Boards Association, and the Delaware Association of School Administrators, shall identify and maintain a school bullying prevention and criminal youth gang detection training program for school district and charter school employees.

### REGULATIONS

No relevant regulations found.

## Bullying, Harassment, or Hazing

### LAWS

#### **14 Del.C. §402. Definitions.**

For the purposes of this chapter, the following terms shall have the following meanings:

(2) "Good cause" means a change in a child's residence due to a change in family residence, a change in the state in which the family residence is located, a change in a child's parent's marital status, a change caused by a guardianship proceeding, placement of a child in foster care, adoption, participation by a child in a foreign exchange program, a reported, recorded, and substantiated instance of "bullying" against their child as defined in § 4161 of this title, or participation by a child in a substance abuse or mental health treatment program, or a set of circumstances consistent with this definition of "good cause."

#### **14 Del.C. §407. Duration of enrollment in receiving district.**

(a)(2) A pupil accepted for enrollment in a school or program pursuant to this chapter shall remain enrolled therein for a minimum of 2 years unless, during that 2-year period,

g. The pupil's parents or guardians wish to terminate the agreement due to a reported, recorded, and substantiated instance of "bullying" against their child as defined in §4161 of this title.

#### **14 Del.C. §4112A. Office of School Criminal Offense and Bullying Ombudsperson.**

(a) There is hereby established within the State Department of Justice, the Office of School Criminal Offense and Bullying Ombudsperson.

(b) The purpose of the Ombudsperson is to ensure the proper administration of the school criminal offense reporting law contained in § 4112 of this title and the school bullying prevention law contained in § 4164 of this title.

(c) The Ombudsperson shall have the power to:

- (1) Investigate and seek to resolve complaints made by and concerns of members of the public, school officials, and pupils regarding criminal offenses and incidents of bullying committed on school property;
- (2) Investigate complaints regarding the alleged failure of school officials to report criminal offenses as required under § 4112 of this title and incidents of bullying as required under § 4164 of this title;
- (3) Establish policies and procedures for eliciting, receiving, investigating, verifying, and resolving complaints; and
- (4) Perform such other acts as are necessary to carry out the purpose set forth in subsection (b) of this section.

**14 Del.C. §4112B. Ombudsperson access.**

(b) The Ombudsperson may initiate an investigation of any criminal offense committed on school property or any incident of bullying independent of the receipt of a specific complaint.

**14 Del.C. §4161. Definitions.**

For purposes of this subchapter:

- (1) "Bullying" means any intentional written, electronic, verbal, or physical act against another student, a school district or charter school volunteer, or a school district or charter school employee that a reasonable person under the circumstances should know will have any of the following effects:
  - a. Place a student, school district or charter school volunteer, or school district or charter school employee in reasonable fear of substantial harm to the student's, volunteer's, or employee's emotional or physical well-being or substantial damages to the student's, volunteer's, or employee's property.
  - b. Create a hostile, threatening, humiliating, or abusive educational environment due to the pervasiveness or persistence of actions or due to a power differential between the bully and the target.
  - c. Interfere with a student having a safe school environment that is necessary to facilitate educational performance, opportunities, or benefits.
  - d. Perpetuate bullying by inciting, soliciting, or coercing an individual or group to demean, dehumanize, embarrass, or cause emotional, psychological, or physical harm to another student, school district or charter school volunteer, or school district or charter school employee.

**14 Del.C. §4162. Child safety awareness, prevention, and other nonacademic trainings.**

(a) Each school district and charter school shall require its employees to receive 12.5 hours of training every 3 years consisting of all of the following:

- (2) Three hours of a school bullying prevention and criminal youth gang detection training program established under § 4164(a) of this title.

**14 Del.C. §4164. School bullying awareness and prevention; criminal youth gang detection.**

(a) School bullying prevention and criminal youth gang detection training program. - The Department of Justice and the Department of Education, in collaboration with law-enforcement agencies, the Delaware State Education Association, the Delaware School Boards Association, and the Delaware Association of School Administrators, shall identify and maintain a school bullying prevention and criminal youth gang detection training program for school district and charter school employees.

(b) Prohibition of bullying. -

- (1) Each school district and charter school shall prohibit bullying and reprisal, retaliation, or false accusation against a target, witness, or one with reliable information about an act of bullying.



(2) Each school district and charter school shall establish a policy which, at a minimum, includes the following components:

- a. A statement prohibiting bullying of any person on school property or at school functions or by use of data or computer software that is accessed through a computer, computer system, computer network, or other electronic technology of a school district or charter school from kindergarten through grade 12. For purposes of this section, "school property" and "school functions" mean as defined in § 4112 of this title.
- b. A definition of bullying no less inclusive than that in § 4161 of this title.
- c. Direction to develop a school-wide bullying prevention program.
- d. A requirement that each school establish a site-based committee that is responsible for coordinating the school's bully prevention program including the design, approval, and monitoring of the program. A majority of the members of the site-based committee must be members of the school professional staff, of which a majority must be instructional staff. The committee also shall contain representatives of the administrative staff, support staff, student body (for a school enrolling students in grades 7 through 12), parents, and staff from the before- or after-school program or programs. These representatives shall be chosen by members of each respective group, except that the school principal shall appoint the representatives of the nonemployee groups. The committee shall operate on a 1-person, 1-vote principle. If a site-based school discipline committee has been established under § 1605(7)a. and b. of this title, that committee shall vote whether to accept the responsibilities of this paragraph (b)(2)d.
- e. A requirement that any school district or charter school employee that has reliable information that would lead a reasonable person to suspect that a person is a target of bullying must immediately report it to the administration.
- f. A requirement that each school have a procedure for the administration to promptly investigate in a timely manner and determine whether bullying has occurred, and that such procedure include investigation of such instances, including a determination of whether the target of the bullying was targeted or reports being targeted wholly or in part due to the target's race, age, marital status, creed, religion, color, sex, disability, sexual orientation, gender identity or expression, or national origin. This subsection does not preclude schools from identifying other reasons or criteria why a person is a target of bullying.
- g. A requirement that, to the extent that funding is available, each school develop a plan for a system of supervision in nonclassroom areas. The plan must provide for the review and exchange of information regarding nonclassroom areas.
- h. An identification of an appropriate range of consequences for bullying.
- i. A procedure for a student or parent to provide information on bullying activity. However, this paragraph does not permit formal disciplinary action solely based on an anonymous report.
- j. A requirement that a parent of any target of bullying or perpetrator of bullying be notified and provided with a form to be generated by the Department of Justice describing the role of the Department of Justice School Ombudsman and providing contact information. This form must also inform a parent of the parent's right to know when the bullying incident in question has been reported to the Department of Education under paragraph (b)(2)k. of this section.
- k. A requirement that all reported incidents of bullying, regardless of whether the school could substantiate the incident, be reported to the Department of Education within 5 working days under Department of Education regulations. The school shall notify a parent of all students involved in the reported incident when the report is made.
- l. A statement prohibiting retaliation following a report of bullying.

m. A procedure for communication between school staff members and medical professionals who are involved in treating students for bullying issues.

n. A requirement that the school bullying prevention program be implemented throughout the year, and integrated with the school's discipline policies and § 4112 of this title.

(c) Dissemination of policy and accountability. -

(1) Each school district and charter school shall adopt the policy consistent with subsection (b) of this section and submit a copy to the Department of Education by January 1 of each year, or by January 1 of a newly approved charter school's first year of operation. For purposes of this paragraph, "submit" includes providing access to the policy via the school district's or charter school's website. Each school district and charter school shall submit a revised policy to the Department of Education within 30 calendar days of a school district's or charter school's revision. The Department of Education shall review a policy or a revised policy submitted under this paragraph for compliance with state and federal law.

(2) Each school district and charter school shall include the policy adopted under subsection (b) of this section in the student and staff handbook. If no handbook is available, or if it is not practical to reprint new handbooks, each school district and charter school shall distribute a copy of the policy annually to all students, parents, faculty, and staff. Each school district and charter school shall provide the telephone number of the Department of Justice School Ombudsperson in writing to parents, students, faculty, and staff and provide the telephone number on the school district's or charter school's website and the website of each school in the school district. Each school district shall prominently display the telephone number of the Department of Justice School Ombudsperson in each school in the school district. Each charter school shall prominently display the telephone number of the Department of Justice School Ombudsperson in the school.

(3) [Repealed.]

(4) The Department of Education shall prepare an annual report, which must include a summary of all reported and all substantiated incidences of bullying, a summary of the information gathered under paragraph (b)(2)f. of this section, and the results of audits conducted under paragraph (d)(4) of this section. The Department shall post the report required by this subsection on its website.

(d) Duties of the Department of Education. -

(1) The Department of Education shall collaborate with the Department of Justice to identify and maintain a model policy that is applicable to kindergarten through grade 12, and post this policy, along with the contact information for the School Ombudsperson, on their websites in order to assist the school districts and charter schools. In addition, the Department of Education shall promulgate a uniform cyberbullying policy, which shall be based upon a model prepared by the Department of Justice and public comment upon that model. Each school district and charter school shall adopt the Department's uniform cyberbullying policy within 90 days of the policy becoming final.

(2) Distribution of the Comprehensive School Discipline Improvement Program funds to a school district and charter school provided in the General Appropriations Act starting in fiscal year 2009 and thereafter is contingent upon Department of Education approval of the school district's or charter school's bullying prevention policy.

(3) To the extent that funding is available, the Department of Education shall provide for an award system for schools with exemplary programs based on criteria promulgated by the Department.

(4) The Department of Education shall conduct random audits of schools to insure compliance with paragraphs (b)(2)i. and (b)(2)k. of this section. The Department shall report the results of these audits annually in the report required by paragraph (c)(4) of this section.

(e) Immunity. - A school district or charter school employee, school district or charter school volunteer, or student is individually immune from a cause of action for damages arising from reporting bullying in good faith and to the appropriate person using the procedures specified in the school district's or charter school's bullying prevention policy, but there is no such immunity if the act of reporting constituted gross negligence or reckless, wilful, or intentional conduct.

(f) Other defenses. -

(1) The physical location or time of access of a technology-related incident is not a valid defense in any disciplinary action by the school district or charter school initiated under this section provided there is sufficient school nexus.

(2) This section does not apply to any person who uses data or computer software that is accessed through a computer, computer system, computer network, or other electronic technology when acting within the scope of that person's lawful employment or investigation of a violation of this section in accordance with school district or charter school policy.

(g) Relationship to reporting requirements. - An incident may meet the definition of bullying and also the definition of a particular crime under state or federal law. Nothing in this section or in the policies promulgated as a result of this section prevents school officials from fulfilling all of the reporting requirements of § 4112 of this title or from reporting probable crimes that occur on school property or at a school function which are not required to be reported under § 4112 of this title. Nothing in this section abrogates the reporting requirements for child abuse or sexual abuse set forth in Chapter 9 of Title 16 or any other reporting requirement under state or federal law.

#### **14 Del.C. §9301. Short title.**

This chapter shall be known and may be cited as the "Anti-Hazing Law."

#### **14 Del.C. §9302. Definitions.**

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Hazing" means any action or situation which recklessly or intentionally endangers the mental or physical health or safety of a student or which wilfully destroys or removes public or private property for the purpose of initiation or admission into or affiliation with, or as a condition for continued membership in, any organization operating under the sanction of or recognized as an organization by an institution of higher learning. The term shall include, but not be limited to, any brutality of a physical nature, such as whipping, beating, branding, forced calisthenics, exposure to the elements, forced consumption of any food, liquor, drug or other substance, or any other forced physical activity which could adversely affect the physical health and safety of the individual, and shall include any activity which would subject the individual to extreme mental stress, such as sleep deprivation, forced exclusion from social contact, forced conduct which could result in embarrassment, or any other forced activity which could adversely affect the mental health or dignity of the individual, or any wilful destruction or removal of public or private property. For purposes of this definition, any activity as described in this definition upon which the admission or initiation into or affiliation with or continued membership in an organization is directly or indirectly conditioned shall be presumed to be "forced" activity, the willingness of an individual to participate in such activity notwithstanding.

#### **14 Del.C. §9303. Hazing prohibited.**

Any person who causes or participates in hazing commits a class B misdemeanor.

#### **14 Del.C. §9304. Enforcement by institution.**

(a) Anti-hazing policy. - Each institution shall adopt a written anti-hazing policy and, pursuant to that policy, shall adopt rules prohibiting students or other persons associated with any organization operating under the sanction of or recognized as an organization by the institution from engaging in any activity which can be described as hazing.

(b) Enforcement and penalties. -

(1) Each institution shall provide a program for the enforcement of such rules and shall adopt appropriate penalties for violations of such rules to be administered by the person or agency at the institution responsible for the sanctioning or recognition of such organizations.

(2) Such penalties may include the imposition of fines, the withholding of diplomas or transcripts pending compliance with the rules or pending payment of fines and the imposition of probation, suspension or dismissal.

(3) In the case of an organization which authorizes hazing in blatant disregard of such rules, penalties may also include rescission of permission for that organization to operate on campus property or to otherwise operate under the sanction or recognition of the institution.

(4) All penalties imposed under the authority of this section shall be in addition to any penalty imposed for violation of paragraph (b)(3) of this section or any of the criminal laws of this State or for violation of any other institutional rule to which the violator may be subject.

(5) Rules adopted pursuant hereto shall apply to acts conducted on or off campus whenever such acts are deemed to constitute hazing.

### **REGULATIONS**

#### **14 DE Admin. Code §103. Accountability for schools, districts and the state.**

##### **7.0 Accountability for Schools that are Under Improvement**

7.6.2.4.2.9 Extend learning time and create community-oriented schools, by

7.6.2.4.2.9.3 Implementing approaches to improve school climate and discipline, such as implementing a system of positive behavioral supports or taking steps to eliminate bullying and student harassment.

#### **14 DE Admin. Code §614. Uniform definitions for student conduct which may result in alternative placement or expulsion.**

##### **3.0 Uniform Definitions for Student Conduct**

The following definitions shall be used whenever a school district or charter school uses such conduct as a basis for alternative placement or expulsion of a student:

"Bullying" means any intentional written, electronic, verbal or physical act or actions against another student, school volunteer or school employee that a reasonable person under the circumstances should know will have the effect of: (1) Placing a student, school volunteer or school employee in reasonable fear of substantial harm to his or her emotional or physical well-being or substantial damage to his or her property; or (2) Creating a hostile, threatening, humiliating or abusive educational environment due to the pervasiveness or persistence of actions or due to a power differential between the bully and the target; or (3) Interfering with a student having a safe school environment that is necessary to facilitate educational performance, opportunities or benefits; or (4) Perpetuating bullying by inciting, soliciting or coercing an individual or group to demean, dehumanize, embarrass or cause emotional, psychological or physical harm to another student, school volunteer or school employee. [...]

"Cyberbullying" means the use of uninvited and unwelcome electronic communication directed at an identifiable student or group of students, through means other than face-to-face interaction, which (1) interferes with a student's physical well-being; or (2) is threatening or intimidating; or (3) is so severe, persistent, or pervasive that it is reasonably likely to limit a student's ability to participate in or benefit from the educational programs of the school district or charter school. Communication shall be considered to be directed at an identifiable student or group of students if it is sent directly to that student or group, or posted in a medium that the speaker knows is likely to be available to a broad audience within the school community. [...]

"Harassment" means any actions or statements made with the intent to harass, annoy, or alarm another person which: A) insults, taunts, or challenges the other person or; B) is a cause of alarming or distressing conduct which serves no legitimate purpose and is done in a manner which the actor knows is likely to provoke a violent or disorderly response or cause a reasonable person to suffer fear, alarm, or distress.

#### **14 DE Admin. Code §624. School district/charter school policy prohibiting cyberbullying.**

##### **1.0 Cyberbullying Forbidden**

In addition to the policy prohibiting bullying put in place by school districts and charter schools pursuant to 14 Del.C. §§ 4161 and 4164, each school district and charter school shall also prohibit cyberbullying (as defined herein) by students directed at other students. Incidents of cyberbullying shall be treated by each school district and charter school in the same manner as incidents of bullying, and notice of each school district's and charter school's policy against cyberbullying shall be provided to students, staff, and faculty in the same manner as notice of the school district's and charter school's policy against bullying.

##### **2.0 Definition of Cyberbullying**

2.1 Cyberbullying means the use of uninvited and unwelcome electronic communication directed at an identifiable student or group of students, through means other than face-to-face interaction, which (1) interferes with a student's physical well-being; or (2) is threatening or intimidating; or (3) is so severe, persistent, or pervasive that it is reasonably likely to limit a student's ability to participate in or benefit from the educational programs of the school district or charter school. Communication shall be considered to be directed at an identifiable student or group of students if it is sent directly to that student or group or posted in a medium that the speaker knows is likely to be available to a broad audience within the school community.

2.2 Whether speech constitutes cyberbullying will be determined from the standpoint of a reasonable student of the same grade and other circumstances as the victim.

2.3 The place of origin of speech otherwise constituting cyberbullying is not material to whether it is considered cyberbullying under this policy, nor is the use of school district or charter school materials.

2.4 Upon implementation of this policy, and again at the beginning of each academic year, each school district and charter school shall inform students in writing of mediums where the posting of speech will be presumed to be available to a broad audience within the school community, regardless of privacy settings or other limitations on those postings. Postings on Facebook, Twitter, MySpace, YouTube, and Pinterest shall be included in each district's and charter school's list of mediums where posting of speech will be presumed to be available to a broad audience within the school community, regardless of privacy settings or other limitations on those postings. Postings on social media sites or forums similar to the enumerated examples above will also be presumed to be available to a broad audience within the school community, regardless of privacy settings or other limitations on those postings.

2.5 Nothing in this policy shall limit in any way a school district's or charter school's ability to regulate student conduct, including bullying, in any manner provided for by existing law, regulation, or policy.

#### **14 DE Admin. Code §1007. DIAA Sportsmanship.**

1.2.1.5.1 The School Administrator and Athletic Director shall:

1.2.1.5.1.8 Develop and implement policies for their interscholastic athletic programs to discourage acts of bullying, hazing, and taunting.

#### **14 DE Admin. Code §1150. School transportation.**

9.0 Pupil Conduct on School Buses

9.1 Districts and Charter Schools shall have a policy concerning the behavior of Pupils on school buses that shall, at a minimum, contain the following rules which if not followed may result in the suspension or denial of bus riding privileges:

9.1.21 Other forms of misconduct that shall not be tolerated on the bus and at bus stops are acts such as, but not limited to, bullying, indecent exposure, obscene gestures, spitting, and other actions that may be addressed in the District or school code of conduct.

## **Dating and Relationship Violence**

### **LAWS**

#### **14 Del.C. §4161. Definitions.**

For purposes of this subchapter:

(14) "Teen dating violence" means assaultive, threatening, or controlling behavior, including stalking as defined in § 1312 of Title 11, that one person uses against another person in order to gain or maintain power or control in a current or past relationship and can occur in both heterosexual and same sex relationships and in serious or casual relationships.

#### **14 Del.C. §4162. Child safety awareness, prevention, and other nonacademic trainings.**

(b) Each school district and charter school shall require a school administrator, school nurse, or school counselor serving 1 or more of the grades in grades 7 through 12 to receive 2 hours of a teen dating violence and sexual assault training program established under § 4166(a) of this title every 3 years. This training may be included in paragraph (a)(4) of this section.

#### **14 Del.C. §4166. Teen dating violence and sexual assault awareness and prevention.**

(a) Teen dating violence and sexual assault training program. - The Delaware Domestic Violence Coordinating Council shall identify and maintain a teen dating violence and sexual assault training program for school administrators, school nurses, and school counselors serving 1 or more of the grades in grades 7 through 12.

(b) Teen dating violence and sexual assault policies. - Each school district and charter school serving 1 or more of the grades in grades 7 through 12 shall establish a policy for responding to teen dating violence and sexual assault that includes, at a minimum, all of the following components:

- (1) Definitions of teen dating violence and sexual assault, the behaviors which constitute each, and the consequences for committing offenses.
- (2) Guidelines on mandatory reporting and confidentiality as required by the law of this State and school district or charter school policy.
- (3) A protocol for responding to incidents of teen dating violence and sexual assault which includes all of the following:
  - a. Procedures regarding initial response.

- b. Procedures for reporting incidents of teen dating violence and sexual assault when a report is required.
- c. Procedures for the documentation of incidents.
- d. Procedures for working with victims.
- e. Procedures for working with perpetrators.

(c) [Repealed.]

(d) Each school district and charter school shall ensure existing health standard programming related to comprehensive healthy relationships, based on the health standards adopted by the Department of Education as approved by the State Board of Education, is provided in health education programs or related classes. The Domestic Violence Coordinating Council shall have the authority to review and advise on the implementation of school district policies and charter school policies related to teen dating violence and sexual assault.

(e) Dissemination of policy and accountability. -

(1) Each school district and charter school shall adopt a policy consistent with subsection (b) of this section. Following review by the Domestic Violence Coordinating Council, each school district and charter school shall submit a copy to the Department of Education by January 5, 2015, or by January 5 of a newly approved charter school's first year of operation.

(2) Each school district and charter school shall ensure that its policy adopted under subsection (b) of this section appears in the student and staff handbook. If no handbook is available, or if it is not practical to reprint new handbooks, each school district and charter school shall ensure that a copy of the policy is distributed annually to all students, parents, faculty, and staff.

(3) The Department of Education shall prepare an annual report, which shall include a summary of reported incidences of teen dating violence and sexual assault. The Department shall submit the report to the Domestic Violence Coordinating Council by August 1 of each year.

(f) Immunity. - A school district or charter school employee, school district or charter school volunteer, or student is individually immune from a cause of action for damages arising from reporting teen dating violence or sexual assault in good faith and to the appropriate person using the procedures specified in the school district's or charter school's teen dating violence and sexual assault policy, but there is no such immunity if the act of reporting constituted gross negligence or reckless, wilful, or intentional conduct.

(g) Relationship to reporting requirements. - Nothing in this section or in the policies promulgated as a result of this section prevents school officials from fulfilling all of the reporting requirements of § 4112 of this title or from reporting probable crimes that occur on school property or at a school function which are not required to be reported under that section. For purposes of this subsection, "school property" and "school function" mean as defined in § 4112 of this title. Nothing in this section abrogates the reporting requirements for child abuse or sexual abuse set forth in Chapter 9 of Title 16 or any other reporting requirement under state or federal law.

(h), (i) [Repealed.]

(j) Short title. - This section shall be known and may be cited as the "Liane Sorenson Act."

## **REGULATIONS**

### **14 DE Admin. Code §601. Schools and law enforcement agencies.**

#### **5.0 Reporting of Crimes to the Delaware Department of Education**

5.1 The superintendent or head administrator of each school district, charter school, and Alternative Program or his/her designee, shall ensure each school within his/her jurisdiction reports to the Department of Education all school crimes required to be reported pursuant to 14 Del.C. § 4112, and

any subsequent amendment thereto. Such reports shall be submitted in a format as designated by the Department of Education and filed with the Department of Education within the time prescribed by Delaware statutes.

#### 6.0 Reporting Specific Incidents of Misconduct

6.1 In addition to those school crimes required to be reported to law enforcement pursuant to 14 Del.C. § 4112, the superintendent or head administrator of each school district, charter school, and Alternative Program, or his/her designee, shall report to the Department of Education incidents of misconduct 6.1.1 through 6.1.14. Such reports shall be submitted in a format as designated by the Department of Education and filed with the Department of Education not later than five working days following the incident.

##### 6.1.13 Teen Dating Violence.

#### **14 DE Admin. Code §614. Uniform definitions for student conduct which may result in alternative placement or expulsion.**

##### 3.0 Uniform Definitions for Student Conduct

The following definitions shall be used whenever a school district or charter school uses such conduct as a basis for alternative placement or expulsion of a student:

"Teen Dating Violence" means assaultive, threatening or controlling behavior, including stalking as defined in 11 Del.C. § 1312, that one person uses against another person in order to gain or maintain power or control in a current or past relationship. The behavior can occur in both heterosexual and same sex relationships, and in serious or casual relationships.



## ***Prevention, Behavioral Intervention, and Supports***

### **State Model Policies and Implementation Support**

#### **LAWS**

##### **14 Del.C. §3801. Declaration of purpose.**

The General Assembly finds and declares that a substantial drug and alcohol trafficking and abuse problem exists in this State among school age children, in schools and on school campuses, parks and playgrounds. It is the purpose of this chapter to support increased efforts by local law enforcement agencies, working in conjunction with school districts and with state and local drug and alcohol prevention agencies, to suppress trafficking, and to prevent drug and alcohol abuse among school-age children in schools and on school campuses, through the development of innovative and model programs jointly undertaken by local law-enforcement agencies and school districts. Further, it is the intent of the General Assembly to establish a program of financial and technical assistance for local law enforcement and school districts, and to formulate a joint policy of pursuing both demand reduction (through education and prevention programs), and supply reduction (through law enforcement).

##### **14 Del.C. §3807. State board of education; Department of public safety.**

The Department of Safety and Homeland Security and the Department of Education shall both have the power to monitor and evaluate the projects and programs under this chapter, and to make comments and suggestions to the Division.

##### **14 Del.C. §4112F. Limitations on use of seclusion and restraint.**

(7) Department of Education role and regulations. -

- a. The Department of Education shall develop, promulgate, and update regulations for this subsection in collaboration with the Governor's Advisory Council for Exceptional Citizens (GACEC).
- b. Timelines for implementation and training shall be primarily based on protecting the health and welfare of children with disabilities.
- c. To the greatest extent practical and appropriate, such regulations shall be consistent with and integrated with the regulations for the remainder of this section.

##### **14 Del.C. §4164. School bullying awareness and prevention; criminal youth gang detection.**

(a) School bullying prevention and criminal youth gang detection training program. - The Department of Justice and the Department of Education, in collaboration with law-enforcement agencies, the Delaware State Education Association, the Delaware School Boards Association, and the Delaware Association of School Administrators, shall identify and maintain a school bullying prevention and criminal youth gang detection training program for school district and charter school employees. [...]

(d) Duties of the Department of Education. -

- (1) The Department of Education shall collaborate with the Department of Justice to identify and maintain a model policy that is applicable to kindergarten through grade 12, and post this policy, along with the contact information for the School Ombudsperson, on their websites in order to assist the school districts and charter schools. In addition, the Department of Education shall promulgate a uniform cyberbullying policy, which shall be based upon a model prepared by the Department of Justice and public comment upon that model. Each school district and charter school shall adopt the Department's uniform cyberbullying policy within 90 days of the policy becoming final.

#### **16 Del. C. §2205. Duties of Office.**

The Office of Substance Abuse Services, as a component of the Department of Health and Social Services, shall:

- (2) Cooperate with the Department of Education, law-enforcement officials, and other public and private agencies to assist with the development and dissemination of substance abuse prevention materials for use at all levels of school education.

### **REGULATIONS**

#### **14 DE Admin. Code §601. Schools and law enforcement agencies.**

##### **3.0 Written Policy and Memorandum of Agreement (MOA)**

3.1 All local school districts, charter schools, and Alternative Programs shall establish a written policy on effectively communicating and working with law enforcement agencies. Each school district, charter school and Alternative Program shall develop a Memorandum of Agreement (MOA) with each law enforcement agency which provides services to it. Each MOA shall be in a form substantially similar to a Model MOA as developed, approved and from time to time revised by the Department of Education.

3.2 The Department shall review the Model MOA and each school district, charter school, or Alternative Program shall review its current MOA at least once every three years.

## **Multi-tiered Frameworks and Systems of Support**

### **LAWS**

No relevant laws found.

### **REGULATIONS**

#### **14 DE Admin. Code §103. Accountability for schools, districts and the state.**

##### **7.6.2.4.2 A district may:**

- 7.6.2.4.2.5 Implement a schoolwide "response-to-intervention" model.

## **Prevention**

### **LAWS**

#### **14 Del.C. §1602. Appropriation.**

The General Assembly shall annually provide an appropriation for the operation of the Comprehensive School Discipline Improvement Program in the budget appropriation bill. From the funds appropriated, the Department may allocate funds to the public school districts for the financial support of various components of the program.

#### **14 Del.C. §1603. Rules and regulations.**

The Department of Education shall, from time to time, adopt and promulgate such rules and regulations as will be necessary for the implementation of the program authorized by this chapter.

#### **14 Del.C. §1605A. Prevention component.**

The Family Services Cabinet Council (Council), with the Department of Education and the Department of Services for Children, Youth and Their Families acting as lead agencies, shall administer a program to

offer prevention-related student support services (prevention services) to students to prevent them from becoming discipline problems and from failing academically in our schools. Within the limits of appropriations made for this purpose, the Council shall provide rules and regulations for the award of prevention grants and the conduct of prevention programs authorized under this section, subject to the following limitations:

(1) The Council shall issue prevention funding to local school districts proposing to establish an integrated plan to deliver prevention services including, but not limited to, academic tutoring and student mentoring programs to provide at-risk students with the extra help they may need to succeed academically and with positive adult role models; outreach programs to promote parental, family and community involvement in students' academic studies and in reducing and resolving school discipline problems; school-linked support services to help students with family or health problems that may be adversely affecting their academic performance and their conduct at school; training to help students and school personnel resolve conflicts peacefully and non-disruptively; and assistance to help teachers better manage the behavior of students in their classrooms.

(2) Applications for funding pursuant to this section shall be made by school districts in accordance with procedures and standards established by the Council. Each applicant shall set forth an integrated plan to provide prevention services consistent with paragraph (1) of this section. To avoid duplication of effort, maximize the impact of limited resources, and increase the effect of efforts by state, local, community and private, nonprofit agencies through increased coordination and cooperation, the Council shall give preference to applications which:

- a. Are submitted by 2 or more school districts working in concert, where appropriate;
- b. Include private, nonprofit agencies and community organizations as partners in the application, and identify the roles those agencies and organizations are to play in delivering prevention services in the community;
- c. Indicate how grants from the federal government and foundations will be used or sought to help deliver prevention services in the community; and
- d. Identify the roles state and local agencies are to play in delivering prevention services in the community.

(3) The Council shall provide technical assistance to districts preparing applications and ongoing assistance to districts awarded funding pursuant to this section.

(4) The Council shall establish a timetable for the award of grants pursuant to this section which shall provide, at minimum, for a period of 1 month for joint planning between the Council and the applicants that the Council selects as finalists eligible for a funding award. During such joint planning, the Council and the applicant shall refine the applicant's prevention plan, ensure that the plan makes cost-effective use of the resources and services of state, local, community and private, nonprofit agencies, and consider the incorporation of successful elements of other districts' prevention programs into the applicant's plans. Final awards shall be made by the Council on or before January 15 of each year for the subsequent school year, contingent upon the appropriation of funds for such purpose in the annual appropriations act.

#### **14 Del.C. §1723. Comprehensive school discipline improvement programs.**

In addition to the funds appropriated to school districts by other sections of this chapter, school districts shall be eligible to make application to the Department of Education for the development and implementation of school discipline improvement programs as specified in Chapter 16 of this title.

## **REGULATIONS**

No relevant regulations found.

## **Social-emotional Learning (SEL)**

### **LAWS**

No relevant laws found.

### **REGULATIONS**

#### **14 DE Admin. Code §609. District and school based intervention services.**

##### **4.0 School Based Intervention Programs**

4.2 A School Based Intervention Program shall include both short term and long term intervention strategies. Such strategies may include character education, short or long term counseling to improve behavior which impacts educational performance, and methods to identify the need to refer students for additional services either within the district or to other agencies. The Program shall also include support services to provide a smooth transition for students who are returning to their regular school from a Consortium Discipline Alternative Program or from a Department of Services to Children, Youth and their Families (DSCYF) setting.

## **Trauma-informed Practices**

### **LAWS**

#### **14 Del.C. §703. Student discipline report; school discipline improvement plan.**

(b)(3)c. The plan may increase or improve professional development opportunities for educators, administrators, and staff. Components of such professional development may include 1 or more of the following:

2. Trauma informed care.

### **REGULATIONS**

No relevant regulations found.

## **Mental Health Literacy Training**

### **LAWS**

No relevant laws found.

### **REGULATIONS**

No relevant regulations found.

# School-based Behavioral Health Programs

## LAWS

### **14 Del.C. §2730. Failure to attend; penalties.**

(c) If the Court determines the student has violated § 2702 of this title, it shall adjudicate the student a truant and may order the following remedial dispositions:

- (4) Mental health evaluation and treatment.

### **14 Del.C. §4126. School-based health centers.**

(a) All public high schools, including vocational-technical schools, but not including charter schools, are required to have a school-based health center compliant with § 3571G of Title 18 and regulations promulgated thereunder.

(b) The State shall bear the start-up costs for a school-based health center at any public high school that lacks such a center as of July 20, 2016. The State shall fund such costs for at least 1 school per fiscal year until such a time as all public high schools, other than charter schools, are in compliance with this section.

### **18 Del. C. §3365. School-based health centers.**

(a) For purposes of this section, a school-based health center (SBHC) is a health clinic that:

- (1) Is located in or near a school facility;
- (2) Is organized through school and health provider relationships;
- (3) Provides through licensed professionals primary health services to children, including comprehensive health assessments, diagnosis, and treatment of minor, acute, and chronic medical conditions, referrals to and follow-up for specialty care and oral and vision health services, mental health and substance use disorder assessments, crisis intervention, counseling, treatment, and referral to a continuum of mental health and substance abuse services including emergency psychiatric care, community support programs, inpatient care, and outpatient programs; and
- (4) Is recognized by the State pursuant to relevant regulations and law.

(b) The Delaware Division of Public Health (DPH) shall have sole authority to determine whether a facility is an SBHC as defined in subsection (a) of this section.

(c) Except as noted herein, benefits provided under insurance contracts delivered, issued for delivery, or renewed in this State shall reimburse SBHCs for covered services provided by SBHCs as if those services were provided by a network provider under the relevant contract of insurance. In the absence of an agreement between a carrier and an SBHC on reimbursement, reimbursement for such services shall be at the rate established by the Division of Medicaid and Medical Assistance for those services. Any insurance contract term purporting to exclude otherwise covered services on the basis that they are performed by an SBHC shall be void except as specifically permitted under this chapter.

(d) If DPH has approved an SBHC, that approval shall be deemed sufficient to meet the carrier's standards for inclusion in its network or for being eligible for payment by the carrier.

(e) SBHCs shall not charge co-pays or any other out-of-pocket fees to students for use of SBHC services. Insurance carriers shall not incur any additional financial liability by virtue of this subsection.

(f) The Delaware DPH, in coordination with the State's SBHCs, insurance carriers, and the Department of Insurance, shall issue regulations to ensure that SBHCs are properly integrated into the State's spectrum of health-care providers that provide covered services to youth. These regulations shall include, but are not limited to:

- (1) Regulations governing reporting to and interaction with students' primary care providers; and
  - (2) Regulations regarding promotion of vaccinations among student users of SBHCs.
- (g) Nothing in this chapter shall prevent the enforceability of an agreement negotiated between an SBHC and an insurance carrier governing claims submission, reimbursement, quality standards, credentialing and similar matters, provided, however, that in the absence of such agreement the terms of this chapter shall govern.

**18 Del. C. §3571G. School-based health centers.**

- (a) For purposes of this section, a school-based health center (SBHC) is a health clinic that:
- (1) Is located in or near a school facility;
  - (2) Is organized through school and health provider relationships;
  - (3) Provides through licensed professionals primary health services to children, including comprehensive health assessments, diagnosis, and treatment of minor, acute, and chronic medical conditions, referrals to and follow-up for specialty care and oral and vision health services, mental health and substance use disorder assessments, crisis intervention, counseling, treatment, and referral to a continuum of mental health and substance abuse services including emergency psychiatric care, community support programs, inpatient care, and outpatient programs; and
  - (4) Is recognized by the State pursuant to relevant regulations and law.
- (b) The Delaware Division of Public Health (DPH) shall have sole authority to determine whether a facility is an SBHC as defined in subsection (a) of this section.
- (c) Except as noted herein, benefits provided under any group or blanket health insurance policy which is delivered, issued for delivery, or renewed in this State shall reimburse SBHCs for covered services provided by SBHCs as if those services were provided by a network provider under the relevant contract of insurance. In the absence of an agreement between a carrier and an SBHC on reimbursement, reimbursement for such services shall be at the rate established by the Division of Medicaid and Medical Assistance for those services. Any insurance contract term purporting to exclude otherwise covered services on the basis that they are performed by an SBHC shall be void except as specifically permitted under this chapter.
- (d) If DPH has approved an SBHC, that approval shall be deemed sufficient to meet the carrier's standards for inclusion in its network or for being eligible for payment by the carrier.
- (e) SBHCs shall not charge co-pays or any other out-of-pocket fees to students for use of SBHC services. Insurance carriers shall not incur any additional financial liability by virtue of this subsection.
- (f) The Delaware DPH, in coordination with the State's SBHCs, insurance carriers, and the Department of Insurance, shall issue regulations to ensure that SBHCs are properly integrated into the State's spectrum of health-care providers that provide covered services to youth. These regulations shall include, but are not limited to:
- (1) Regulations governing reporting to and interaction with students' primary care providers; and
  - (2) Regulations regarding promotion of vaccinations among student users of SBHCs.
- (g) Nothing in this chapter shall prevent the enforceability of an agreement negotiated between an SBHC and an insurance carrier governing claims submission, reimbursement, quality standards, credentialing and similar matters, provided, however, that in the absence of such agreement the terms of this chapter shall govern.

## **REGULATIONS**

### **16 DE Admin. Code §4000-4102. School-based health centers.**

#### Section 2.0 Definitions.

"School-based health center" means a health care clinic located in or near a school facility that is organized through school and health provider relationships that provides services designated in Section 4.0 of this regulation. [...]

#### Section 4.0 Service Provision.

4.3 All SBHCs shall provide through licensed professionals, primary health services to children, including comprehensive health assessments, diagnosis, and treatment of minor, acute, and chronic medical conditions, nutrition consultation/education, referrals to and follow-up for specialty care and oral and vision health services, mental health and substance use disorder assessments, crisis intervention, counseling, treatment, and referral to a continuum of mental health and substance abuse services including emergency psychiatric care, community support programs, inpatient care, and outpatient programs.

## ***Monitoring and Accountability***

### **Formal Incident Reporting of Conduct Violations**

#### **LAWS**

##### **14 Del.C. §4112. Reporting school crimes.**

(c) Student possession of weapons and unlawful drugs. - Whenever a school employee has reliable information that would lead a reasonable person to believe that a person on school property or at a school function has on his or her person, concealed in that person's possessions, or placed elsewhere on school property:

- (1) Any controlled substance prohibited by Title 16; or
- (2) Any deadly weapon, destructive weapon, dangerous instrument or incendiary or explosive device as prohibited by Title 11, the school employee shall immediately report the incident to the principal, who shall conduct a thorough investigation. If the investigation verifies that good reason exists to believe that a crime has been committed, the principal shall immediately notify the appropriate police agency of the incident. If the police agency determines that probable cause exists to believe that a crime has been committed, then the principal shall file a written report of the incident with the Department of Education within 5 working days.

##### **14 Del.C. §4112A. Office of School Criminal Offense and Bullying Ombudsperson.**

- (a) There is hereby established within the State Department of Justice, the Office of School Criminal Offense and Bullying Ombudsperson.
- (b) The purpose of the Ombudsperson is to ensure the proper administration of the school criminal offense reporting law contained in § 4112 of this title and the school bullying prevention law contained in § 4164 of this title.
- (c) The Ombudsperson shall have the power to:
  - (1) Investigate and seek to resolve complaints made by and concerns of members of the public, school officials, and pupils regarding criminal offenses and incidents of bullying committed on school property;
  - (2) Investigate complaints regarding the alleged failure of school officials to report criminal offenses as required under § 4112 of this title and incidents of bullying as required under § 4164 of this title;
  - (3) Establish policies and procedures for eliciting, receiving, investigating, verifying, and resolving complaints; and
  - (4) Perform such other acts as are necessary to carry out the purpose set forth in subsection (b) of this section.

##### **14 Del.C. §4164. School bullying awareness and prevention; criminal youth gang detection.**

(b)(2)k. A requirement that all reported incidents of bullying, regardless of whether the school could substantiate the incident, be reported to the Department of Education within 5 working days under Department of Education regulations. The school shall notify a parent of all students involved in the reported incident when the report is made.

#### **REGULATIONS**

##### **14 DE Admin. Code §601. Schools and law enforcement agencies.**

5.0 Reporting of Crimes to the Delaware Department of Education



5.1 The superintendent or head administrator of each school district, charter school, and Alternative Program or his/her designee, shall ensure each school within his/her jurisdiction reports to the Department of Education all school crimes required to be reported pursuant to 14 Del.C. § 4112, and any subsequent amendment thereto. Such reports shall be submitted in a format as designated by the Department of Education and filed with the Department of Education within the time prescribed by Delaware statutes.

#### **14 DE Admin. Code §610. Limitations on use of seclusion and restraint.**

##### **6.0 Uniform Data Collection**

6.1 When an incident of physical restraint of a student by school personnel occurs:

6.1.1 As soon as practicable thereafter, a reasonable attempt shall be made to interview the student regarding the incident; and

6.1.2 The school principal must provide a written report, in a uniform format as determined by the Department, of the restraint to the Department within seventy-two (72) hours of the restraint, or within seventy-two (72) hours of the time in which the student's district or charter school of residence receives notice of the restraint from the contracted private program or alternative program, whichever the case may be; and

6.1.3 The written report shall include, at a minimum:

6.1.3.1 Details of the restraint incident, including, but not limited to, the student behavior and description of events leading to the use of physical restraint; de-escalation techniques utilized by school personnel prior to the restraint; a description of the student's behavior during the restraint; a summary of witness interviews, if applicable; any injury caused to the student, staff member(s), or other student(s); and any related treatment deemed necessary as a result of the restraint.

6.1.3.2 Demographic information on affected students to include age, race, ethnicity, and disability category;

6.1.3.3 A description of the interview conducted with the student, if applicable; and

6.1.3.4 If applicable, a description of changes to any or all of the following that resulted from the restraint incident:

6.1.3.4.1 For a student with a disability as defined in Chapter 31 of Title 14 or 34 C.F.R. Part 104, the student's IEP, behavioral support, crisis intervention plan, accommodation plan, or any other planning document for the individual student;

6.1.3.4.2 School/LEA policy or procedure; or

6.1.3.4.3 Additional staff training.

#### **14 DE Admin. Code §612. Possession, use or distribution of drugs and alcohol.**

##### **4.0 Requirement of Each School District and Charter School to have a Policy**

4.1 Each school district and charter school shall have a policy on file and update it periodically. The policy shall include, at a minimum, the following:

4.1.3 A written policy which sets out procedures for reporting incidents to police authorities, parents, guardians or relative caregivers and to the Department of Education, while maintaining confidentiality.

4.1.4 A written policy on how evidence is to be kept, stored and documented, so that the chain of custody is clearly established prior to giving such evidence over to the police.

#### **14 DE Admin. Code §616. Uniform due process procedures for alternative placement meetings and expulsion hearings.**

##### **3.2 Reporting Requirements**

3.2.1 If the investigation reveals that there is reliable information that would lead a reasonable person to believe that a mandatorily reportable crime under 14 Del.C. § 4112 has been committed, the Principal shall immediately notify the appropriate law enforcement agency of the incident.

3.2.1.1 All reports to the appropriate law enforcement agency must be made immediately by telephone or in person and shall be followed by a written report of the investigation within three (3) business days.

3.2.2 The Principal shall report all offenses listed as a mandatory report to the Department of Education under 14 Del.C. § 4112 and 14 DE Admin. Code 601 within five (5) business days of the incident by completing the information in the eSchoolPlus discipline center or successor Delaware Department of Education approved student database management application.

## **Parental Notification**

### **LAWS**

#### **14 Del.C. §2702. Compulsory attendance requirements; evaluation of readiness; exit interview.**

(d) The following provisions shall be applicable in regard to statewide minimum mandatory attendance requirements in each school year for children in grades K through 12.

(1) Following the tenth day of unexcused absence by a student, the school shall immediately notify the parent or parents or guardian and a visiting teacher for the district shall visit the student's home;

(2) Following the fifteenth day of unexcused absence by a student, the student's parent or parents or guardian shall be notified by certified mail to appear at the school within 10 days of notification for a conference and counseling;

(3) Following the twentieth day of unexcused absence by a student, the school shall refer the case for prosecution;

(4) Following the completion of prosecution of the case and the subsequent failure of the student to return to school within 5 school days thereof, the school shall immediately notify the Department of Services for Children, Youth and Their Families requesting intervention services by the Department. The Department shall contact the family within 10 business days. [...]

(f) If contacted by the school pursuant to paragraph (d)(2) of this section, each parent or guardian of a student shall sign a contract with the district agreeing they will make every reasonable effort to:

(1) Have their child or children abide by the school code of conduct;

(2) Make certain their child attends school regularly; and

(3) Provide written documentation for the reasons for any absence.

#### **14 Del.C. §2723. Responsibility of police officers.**

(a) Any pupil under the age of 16 identified by a police officer as being off school property without official authorization may be returned to that pupil's home school.

(b) Any pupil under the age of 16 identified by a police officer as being off school property without official authorization may be detained by the police for a period not to exceed 2 hours for the purpose of notification of parent or guardian. This detention may be within the police station but not in a criminally confined area.

**14 Del.C. §2725. Absences without excuse; truancy conferences.**

(b) If a student is truant, the principal shall schedule a truancy conference with the student, the student's parent and the principal pursuant to § 2726 of this title. The conference may be attended by other persons as the principal may include.

**14 Del.C. §2726. Procedure for truancy conferences.**

The provisions of § 4122 of this title shall apply to truancy conferences. The principal shall determine the date, time and place of the conference and shall give all participants notice at least 1 week prior to the conference. In conducting a truancy conference, the principal may exclude any person, including a parent or a student, from the conference or part of a conference.

**14 Del.C. §2728. Procedure for court adjudication.**

(a) When the school charges a parent or a student with a violation of § 2702 of this title, the school shall file a written complaint in the court. The complaint shall be on such form(s) as the court may require. The school shall be the complainant and the parent or the student shall be the defendant. The court must determine whether probable cause exists to issue a warrant or summons against the person charged. When there is probable cause to find that a student is truant, probable cause to issue a warrant or summons for a parent shall exist when the parent is named as the parent or guardian on the student's school records and the parent resides in Delaware.

(b) The school shall attach to the complaint any record relevant to the allegations of the complaint.

(c) When a complaint is filed, all sanctions imposed by the principal shall remain in effect unless suspended or terminated by the principal or stayed by the court.

(d) The school may request that the court postpone adjudication. The court in its discretion may postpone the proceedings and may impose conditions on the student or parent.

**14 Del.C. §4112F. Limitations on use of seclusion and restraint.**

(c) Department of Education role; regulations. -

(1) The Department of Education shall promulgate regulations implementing this section. Such regulations shall include, but not be limited to, the following:

b. Requirement of timely parental notice in event of use of physical restraint. [...]

(4) Unless proscribed by federal law, the Secretary of Education may issue a waiver of the prohibition on mechanical restraint and seclusion for an individual student based on compelling justification and subject to specific conditions and safeguards which must include a requirement of continuous visual staff monitoring and parental notice of each use of mechanical restraint or seclusion.

**14 Del.C. §4117. Substance abuse.**

(a) Each school district shall designate an administrator in every school as the person responsible for reporting, to parents and/or law enforcement agencies, any violation and/or problems relating to the abuse of controlled substances. Such administrator shall not be liable under the laws of this State for any act or omission committed by the administrator in the performance of that administrator's duties and responsibilities under this section.

(b) No administrator having reporting responsibilities under this section shall be required to report any substance abuse violation and/or problem to a parent if such person, being the principal of the school, reasonably believes that a parent or parents are a cause of or are involved in the violation and/or problem; nor shall any other administrator, having reporting responsibilities under this section, be required to report any substance abuse violation and/or problem to a parent, if such administrator and the principal

of the school both believe that a parent or parents are a cause of or are involved in the violation or problem.

**14 Del.C. §4164. School bullying awareness and prevention; criminal youth gang detection.**

(b)(2)j. A requirement that a parent of any target of bullying or perpetrator of bullying be notified and provided with a form to be generated by the Department of Justice describing the role of the Department of Justice School Ombudsman and providing contact information. This form must also inform a parent of the parent's right to know when the bullying incident in question has been reported to the Department of Education under paragraph (b)(2)k. of this section. [...]

k. A requirement that all reported incidents of bullying, regardless of whether the school could substantiate the incident, be reported to the Department of Education within 5 working days under Department of Education regulations. The school shall notify a parent of all students involved in the reported incident when the report is made.

**REGULATIONS**

**14 DE Admin. Code §610. Limitations on use of seclusion and restraint.**

**5.0 Parental Notification of Use of Physical Restraint**

5.1 Except as provided in Section 5.1.1, if a student is physically restrained, a reasonable attempt shall be made to notify the parent on the same day, but in no event later than twenty-four hours after, the physical restraint is used. Such notification shall be made in person, by phone or by voicemail, or by e-mail. The school shall maintain written documentation of successful and unsuccessful attempts to notify the parent.

5.1.1 Where physical restraint is included in the student's IEP or Section 504 Plan, the IEP Team or Section 504 Team, including the parent, shall determine a timeframe and manner of notification of each incident of physical restraint.

5.2 The parent shall be provided a copy of a final written report no later than the date on which such report is filed with the Department. The written report shall contain, at a minimum, the information required under Section 6.0.

**14 DE Admin. Code §612. Possession, use or distribution of drugs and alcohol.**

**4.0 Requirement of Each School District and Charter School to have a Policy**

4.1 Each school district and charter school shall have a policy on file and update it periodically. The policy shall include, at a minimum, the following:

4.1.3 A written policy which sets out procedures for reporting incidents to police authorities, parents, guardians or relative caregivers and to the Department of Education, while maintaining confidentiality.

**14 DE Admin. Code §616. Uniform due process procedures for alternative placement meetings and expulsion hearings.**

**5.0 Suspensions**

5.4 When a student receives a Suspension from school (in or out-of-school), reasonable attempts to provide verbal notification to the Parent shall be made by the Principal prior to the Suspension being served. Written notification of the Suspension and information regarding the districts/charters appeal or Grievance process shall be given or sent to the Parent as soon as practicable, but no later than three business days. The notification shall state the cause and duration of the Suspension.

5.4.1 The Parent or student may appeal the Suspension to the next administrative level in accordance with the district/charter's appeal or Grievance process.

5.5 Prior to the student's return from an out-of-school Suspension of three (3) school days or more, the Principal shall hold an in-person or phone conference with the Parent and student. A definite time, date, and place for the conference shall be designated by the Principal. The Principal may waive this conference requirement. [...]

#### 10.0 Procedures for the Expulsion of Students

10.2 After the student has been afforded initial due process procedures, if the Principal decides that Disciplinary Action in the form of a recommendation for Expulsion will be made, the following procedures shall be followed:

10.2.1 Student will be given written notice of charges and the Parent shall be notified verbally and in writing as soon as practicable thereafter.

10.2.2 The student shall be given a Short-term Suspension pursuant to the criteria outlined in Section 6.0 of this regulation. The Parent shall be provided a copy of a Suspension form that includes a written notice of the Student Code of Conduct violation(s).

10.2.3 The Principal shall hold a Building Level Conference with the Parent and the student. The Principal shall explain to the Parent and the student the purpose of the meeting is to inform them: 1) of the recommendation for Expulsion; 2) that the student will be serving a Short-term Suspension pending the outcome of the Expulsion hearing and; 3) of the procedures that will take place as follow-up to the recommendation for Expulsion.

10.2.3.1 The conference shall be held by phone or in person.

10.2.3.2 The Principal shall have at least one other person present to take notes during the conference or shall have the conference audio recorded. [...]

#### 10.3 Expulsion Hearings

10.3.1 Upon receipt of a recommendation following the Building Level Conference, the Superintendent shall review documentation to affirm that appropriate discipline procedures were followed. The Superintendent shall, within ten (10) business days of the date of the incident, notify the student and the Parent by letter that a district-level Expulsion hearing will be held to consider the recommendation.

10.3.1.1 The Superintendent shall not have been a participant in the disciplinary investigation or Building Level Conference resulting in the recommendation for Expulsion.

10.3.2 Written notice shall, at a minimum, be sent by regular U.S. and certified mail to the Parent describing the circumstances which led to the recommendation for Expulsion and shall give the date, time, and location of the hearing.

10.3.3 The hearing shall be held not less than seven (7) business days or more than twenty (20) business days after receipt of written notice. The written notice shall be deemed to be received on the fourth business day following the day of mailing. This time period may be waived by agreement of the parties. A copy of the documentation shall be made available, upon request, to the student and Parent at the district/charter school office prior to the mailing.

# Data Collection, Review, and Reporting of Discipline Policies and Actions

## LAWS

### **14 Del.C. §121. General powers of the Department of Education.**

(a) The Department shall exercise general control and supervision over the public schools of the State, including:

(9) Requiring boards of education of reorganized school districts to submit reports covering student achievement, discipline, expenditures, business methods, accounts, registration, attendance, and any other matter it finds necessary and advisable consistent with the State's policy, as reflected in §§ 122(d), (e) and 124A(f) of this title, to avoid duplicative or unnecessarily burdensome reporting obligations; and receiving and examining such reports and, through its staff, examining and giving advice on expenditures, business methods, and accounts of boards of education of reorganized school districts.

### **14 Del.C. §124A. Education Profile reports.**

(c) The Education Profiles shall contain, but need not be limited to, information such as the following to be reported on a state, district and school-specific basis:

(3) Information pertaining to school safety and discipline and student attendance and truancy.

### **14 Del.C. §703. Student discipline report; school discipline improvement plan.**

(a) The Department shall compile and release an annual report on student discipline in all schools as follows:

(1) The analysis must be based on data, as permitted under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, collected over the 3 most recent consecutive school years.

(2) The report must be posted on the Department's website no later than October 30.

(3) The report shall include both statewide totals and individual school data, for each of the school years in the report, on the issuance of out-of-school suspensions, expulsions, alternative school assignments, and in-school suspensions, disaggregated by race, ethnicity, gender, grade level, limited English proficiency, incident type, discipline duration, and if the student is identified as having a disability.

(4) The report must identify, for each school year in the report, schools that meet any of the following thresholds:

a. Calculations under this subsection should exclude subgroups that contain fewer than 15 students.

b. A school with an out-of-school suspension rate for all students or any 1 subgroup that exceeds any of the following:

1. A rate of 20 suspensions per 100 students for the 2018 through 2019 school year.

2. A rate of 15 suspensions per 100 students for the 2019 through 2020 school year and each school year thereafter.

c. A school for which the out-of-school suspension gap between the lowest-suspended racial subgroup and the highest suspended racial subgroup, or the suspension gap between students with disabilities and students without disabilities, exceeds any of the following:

1. Twenty percent for the 2018 through 2019 school year.

2. Fifteen percent for the 2019 through 2020 school year.

3. Ten percent for the 2020 through 2021 school year and each school year thereafter.

#### **14 Del.C. §4112F. Limitations on use of seclusion and restraint.**

(c) Department of Education role; regulations. -

(1) The Department of Education shall promulgate regulations implementing this section. Such regulations shall include, but not be limited to, the following:

a. Requirement of uniform public school data collection on each use of physical restraint, by school, which includes demographic information on affected students such as age, gender, race, ethnicity, and disability category, if any. [...]

(2) To facilitate data collection and analysis, the Department of Education may adopt a uniform reporting document and may require reporting of data in a standardized electronic or nonelectronic format.

(3) The Department of Education shall issue an annual report on use of physical restraint which includes rates of usage by school and by subcategories identified in paragraph (c)(1)a. of this section, identifies trends, and analyzes significant results.

#### **14 Del.C. §4164. School bullying awareness and prevention; criminal youth gang detection.**

(c)(4) The Department of Education shall prepare an annual report, which must include a summary of all reported and all substantiated incidences of bullying, a summary of the information gathered under paragraph (b)(2)f. of this section, and the results of audits conducted under paragraph (d)(4) of this section. The Department shall post the report required by this subsection on its website.

### **REGULATIONS**

#### **14 DE Admin. Code §104. Education profiles for schools, districts, and the state.**

##### **1.0 Education Profiles**

All public schools, including charter schools, reorganized or vocational-technical school districts and the State shall issue Delaware Public Education Profiles on the state of Delaware's public school system as required by 14 Del.C. §124A. The profiles shall be provided in a web format as well as an abbreviated print format pursuant to 2.0 of this regulation. The profiles shall be referred to as school, district, and state Profiles respectively. Each website profile shall contain, but need not be limited to, the following information, aggregated at the appropriate level (school, district or state), unless otherwise noted:

1.10 Information pertaining to school safety and discipline and student attendance.

#### **14 DE Admin. Code §601. Schools and law enforcement agencies.**

##### **5.0 Reporting of Crimes to the Delaware Department of Education**

5.1 The superintendent or head administrator of each school district, charter school, and Alternative Program or his/her designee, shall ensure each school within his/her jurisdiction reports to the Department of Education all school crimes required to be reported pursuant to 14 Del.C. § 4112, and any subsequent amendment thereto. Such reports shall be submitted in a format as designated by the Department of Education and filed with the Department of Education within the time prescribed by Delaware statutes.

##### **6.0 Reporting Specific Incidents of Misconduct**

6.1 In addition to those school crimes required to be reported to law enforcement pursuant to 14 Del.C. § 4112, the superintendent or head administrator of each school district, charter school, and Alternative Program, or his/her designee, shall report to the Department of Education incidents of misconduct 6.1.1 through 6.1.14. Such reports shall be submitted in a format as designated by the Department of Education and filed with the Department of Education not later than five working days following the incident.

- 6.1.1 Pornography, possession and production
- 6.1.2 Criminal mischief (vandalism)
- 6.1.3 Tampering with public records
- 6.1.4 Alcohol, possession and use
- 6.1.5 Felony theft
- 6.1.6 Bullying (allegations and substantiated incidents)
- 6.1.7 Offensive Touching (student or employee victim)
- 6.1.8 Terroristic Threatening (student or employee victim)
- 6.1.9 Sexual Harassment
- 6.1.10 Fighting
- 6.1.11 Inhalants
- 6.1.12 Drug Paraphernalia
- 6.1.13 Teen Dating Violence
- 6.1.14 Unlawful Drug Use/Influence.

**14 DE Admin. Code §603. Compliance with the Gun Free Schools Act.**

2.0 Submission of the Policy to the State Department of Education

2.1 Each school district and charter school shall submit the following to the Delaware Department of Education annually, in such form as the Department requires:

2.1.1 An electronic copy of its policy implementing the Gun-Free Schools Act (20 U.S.C. § 7961) and complying with 11 Del.C. § 1457(j) or its successor statute; and

2.1.2 An electronic copy of any revised policy implementing the Gun-Free Schools Act (20 U.S.C. § 7961) and complying with 11 Del.C. § 1457(j) or its successor statute under the policy implemented in accord with this regulation within ninety (90) days of such revision regardless of whether revisions were made as a result of changes to federal, state or local law, regulations, guidance or policies; and

2.1.3 Descriptions of the expulsions imposed under 11 Del.C. § 1457(j) or its successor statute and under the policy implemented in accord with this regulation.

**14 DE Admin. Code §610. Limitations on use of seclusion and restraint.**

7.0 Annual Reporting Requirement

The Department shall issue an annual report on the use of physical restraint, which shall include rates of usage by school and by subcategories identified pursuant to Section 6.0, identify trends, and analyze significant results. The report shall be posted on the Department's website.

**14 DE Admin. Code §611. Consortium discipline alternative programs for treatment of severe discipline problems.**

13.0 Evaluation

The Department of Education shall annually evaluate the effectiveness of the Consortium Discipline Alternative Programs using criteria that includes student demographic data, types of interventions employed, and prior versus subsequent behavioral and academic patterns, parent involvement, agency involvement and recidivism. In addition, the Department of Education shall annually review the decisions acquired pursuant to Section 3.0 to assess the reasons for non-placement of students in the alternative programs, including lack of space and number, age, race and special education status of excluded



students by district and charter school. Grantees shall compile and submit data based on uniform standards and format established by the Department.

**14 DE Admin. Code §612. Possession, use or distribution of drugs and alcohol.**

**5.0 Reporting Requirements and Timelines**

5.1 Each local school district and charter school shall have an electronic copy of its current possession, use and distribution of Drugs and Alcohol policy on file with the Department of Education.

5.2 When a local school district or charter school revises its possession, use, and distribution of Drugs and Alcohol policy, it shall notify the Department of Education of the revised policy within thirty (30) days of the revision, even if the revision was made because of changes in federal, state or local law, regulations, guidance or policies.

**14 DE Admin. Code §616. Uniform due process procedures for alternative placement meetings and expulsion hearings.**

3.2.2 The Principal shall report all offenses listed as a mandatory report to the Department of Education under 14 Del.C. § 4112 and 14 DE Admin. Code 601 within five (5) business days of the incident by completing the information in the eSchoolPlus discipline center or successor Delaware Department of Education approved student database management application.

## ***Partnerships between Schools and Law Enforcement***

### **Referrals to Law Enforcement**

#### **LAWS**

##### **14 Del.C. §4112. Reporting school crimes.**

(c) Student possession of weapons and unlawful drugs. - Whenever a school employee has reliable information that would lead a reasonable person to believe that a person on school property or at a school function has on his or her person, concealed in that person's possessions, or placed elsewhere on school property:

- (1) Any controlled substance prohibited by Title 16; or
- (2) Any deadly weapon, destructive weapon, dangerous instrument or incendiary or explosive device as prohibited by Title 11, the school employee shall immediately report the incident to the principal, who shall conduct a thorough investigation. If the investigation verifies that good reason exists to believe that a crime has been committed, the principal shall immediately notify the appropriate police agency of the incident. If the police agency determines that probable cause exists to believe that a crime has been committed, then the principal shall file a written report of the incident with the Department of Education within 5 working days.

##### **14 Del.C. §4117. Substance abuse.**

(a) Each school district shall designate an administrator in every school as the person responsible for reporting, to parents and/or law enforcement agencies, any violation and/or problems relating to the abuse of controlled substances. Such administrator shall not be liable under the laws of this State for any act or omission committed by the administrator in the performance of that administrator's duties and responsibilities under this section.

(b) No administrator having reporting responsibilities under this section shall be required to report any substance abuse violation and/or problem to a parent if such person, being the principal of the school, reasonably believes that a parent or parents are a cause of or are involved in the violation and/or problem; nor shall any other administrator, having reporting responsibilities under this section, be required to report any substance abuse violation and/or problem to a parent, if such administrator and the principal of the school both believe that a parent or parents are a cause of or are involved in the violation or problem.

#### **REGULATIONS**

##### **14 DE Admin. Code §601. Schools and law enforcement agencies.**

###### **6.0 Reporting Specific Incidents of Misconduct**

6.1 In addition to those school crimes required to be reported to law enforcement pursuant to 14 Del.C. § 4112, the superintendent or head administrator of each school district, charter school, and Alternative Program, or his/her designee, shall report to the Department of Education incidents of misconduct 6.1.1 through 6.1.14. Such reports shall be submitted in a format as designated by the Department of Education and filed with the Department of Education not later than five working days following the incident.

6.1.1 Pornography, possession and production

6.1.2 Criminal mischief (vandalism)

6.1.3 Tampering with public records

- 6.1.4 Alcohol, possession and use
- 6.1.5 Felony theft
- 6.1.6 Bullying (allegations and substantiated incidents)
- 6.1.7 Offensive Touching (student or employee victim)
- 6.1.8 Terroristic Threatening (student or employee victim)
- 6.1.9 Sexual Harassment
- 6.1.10 Fighting
- 6.1.11 Inhalants
- 6.1.12 Drug Paraphernalia
- 6.1.13 Teen Dating Violence
- 6.1.14 Unlawful Drug Use/Influence.

**14 DE Admin. Code §612. Possession, use or distribution of drugs and alcohol.**

4.0 Requirement of Each School District and Charter School to have a Policy

4.1 Each school district and charter school shall have a policy on file and update it periodically. The policy shall include, at a minimum, the following:

- 4.1.3 A written policy which sets out procedures for reporting incidents to police authorities, parents, guardians or relative caregivers and to the Department of Education, while maintaining confidentiality.

**14 DE Admin. Code §616. Uniform due process procedures for alternative placement meetings and expulsion hearings.**

3.2 Reporting Requirements

3.2.1 If the investigation reveals that there is reliable information that would lead a reasonable person to believe that a mandatorily reportable crime under 14 Del.C. § 4112 has been committed, the Principal shall immediately notify the appropriate law enforcement agency of the incident.

- 3.2.1.1 All reports to the appropriate law enforcement agency must be made immediately by telephone or in person and shall be followed by a written report of the investigation within three (3) business days.

## **School Resource Officer (SRO) or School Security Officer (SSO) Training or Certification**

### **LAWS**

**14 Del.C. §4112F. Limitations on use of seclusion and restraint.**

(d) School resource officer training. - Training and reporting related to employees, contractors, or subcontractors excluded from the definition of "public school personnel" under paragraph (a)(4) of this section shall be governed by this subsection. This subsection shall be limited to those employees, contractors, or subcontractors who will assist with or independently intervene with students with disabilities, which shall include all students eligible to be identified as students with disabilities under Individuals with Disabilities Education Act (IDEA) [20 U.S.C. § 1401 et seq.], § 504 of the Rehabilitation Act of 1973 [29 U.S.C. § 794] and The Americans with Disabilities Act (ADA) [42 U.S.C. § 12101 et seq.].

- (1) Employees, contractors, and subcontractors governed by this subsection shall annually receive the following awareness training from their school district or charter school:

- a. Training which is consistent with that which is required of other public school personnel for disability awareness and behaviors that may manifest as a result of disabilities.
  - b. Best practices for de-escalation techniques in a school setting.
  - c. Information on intervention decisions and techniques used by school personnel in a school setting.
  - d. Such other training as is necessary to protect the health and well-being of students with disabilities as promulgated in implementing regulation, which shall include basic awareness training specific to individualized education programs (IEP), functional behavior assessments and behavior support plans.
  - e. This training shall include references as to how it relates to school resource officer (SRO) duties and responsibilities outlined in their employment contract and school district or charter school memorandum of agreement (MOA). This training shall be consistent with the annual training already provided to school district or charter school educators.
- (2) Employees, contractors, and subcontractors, governed by this subsection shall annually participate in the SRO training provided by the State Police or equivalent training provided by the police department employing the SRO in the school district or charter.

## **REGULATIONS**

### **14 DE Admin. Code §610. Limitations on use of seclusion and restraint.**

#### **9.0 School Resource Officer (SRO) Training**

9.1 A SRO shall annually receive the following awareness level training from the school district or charter school in which they are assigned:

9.1.1 Training which is consistent with that which is required of other public school personnel within their school district or charter school for disability awareness and behaviors that may manifest as a result of disabilities;

9.1.2 Best practices for de-escalation techniques utilized in the school setting;

9.1.3 Current information on the intervention decisions and techniques used by school personnel within the school setting;

9.1.4 Such other training as is necessary to protect the health and well-being of students with disabilities, including students with Individualized Education Programs (IEP) who enroll after the beginning of the school year, which shall include basic awareness training specific to IEPs, functional behavior assessments and Behavior Support Plans;

9.1.5 A SRO shall participate in the annual SRO training provided by the Delaware State Police or equivalent training provided by the police agency employing the SRO.

9.2 The training outline in this regulation shall include reference to how it relates to the duties and responsibilities of a SRO as outlined in the Memorandum of Agreement between the school district or charter school and the police agency employing the SRO as required under Regulation 601.

9.3 Prior to the start of each school year, or as soon as practical, but no later than 30 calendar days after the first student day of school, a representative of each school building shall meet with the SRO assigned to that school in order to be familiarized with behaviors related to disabilities that may occur in the school and typical responsive actions that may be taken by school personnel in that school.

9.4 Nothing within this regulation or contained within 14 Del.C. § 4112F shall be interpreted as creating any additional restrictions on the sworn authority of law enforcement officers or their ability to carry out their required sworn duty.

## **Authorizations, Memoranda of Understanding (MOUs), and/or Funding**

## **LAWS**

**14 Del.C. §4112F. Limitations on use of seclusion and restraint.**

(d)(5) Each school district or charter school which contracts with SROs shall have a MOA consistent with the MOA template as required by Department of Education regulation with the agency which employs or manages those sworn officers.

**REGULATIONS**

**14 DE Admin. Code §601. Schools and law enforcement agencies.**

**3.0 Written Policy and Memorandum of Agreement (MOA)**

3.1 All local school districts, charter schools, and Alternative Programs shall establish a written policy on effectively communicating and working with law enforcement agencies. Each school district, charter school and Alternative Program shall develop a Memorandum of Agreement (MOA) with each law enforcement agency which provides services to it. Each MOA shall be in a form substantially similar to a Model MOA as developed, approved and from time to time revised by the Department of Education.

3.2 The Department shall review the Model MOA and each school district, charter school, or Alternative Program shall review its current MOA at least once every three years.

**14 DE Admin. Code §610. Limitations on use of seclusion and restraint.**

**9.0 School Resource Officer (SRO) Training**

9.2 The training outline in this regulation shall include reference to how it relates to the duties and responsibilities of a SRO as outlined in the Memorandum of Agreement between the school district or charter school and the police agency employing the SRO as required under Regulation 601.

**Threat Assessment Protocols**

**LAWS**

No relevant laws found.

**REGULATIONS**

No relevant regulations found.

## ***State-Sponsored, Publicly Available Websites or Other Resources on School Discipline***

Safe, supportive learning environments use disciplinary policies and practices that help students stay out of the justice system, while ensuring academic engagement and success for all students. The following resources provided by Delaware provide additional context to state policy and regulations and, in some cases, may support the readers' efforts to provide a positive disciplinary school climate.

<b>Title</b>	<b>Description</b>	<b>Website address (if applicable)</b>
<b><i>Website</i></b>		
Delaware Positive Behavior Support Project, University of Delaware College of Education & Human Development	Serves as a technical assistance (TA) center for the Delaware Department of Education to provide statewide professional development, TA and coaching to Delaware educators to implement Positive Behavior Support (PBS) as a multi-tiered system of support (MTSS).	<a href="http://www.delawarepbs.org/">http://www.delawarepbs.org/</a>
Office of School Climate, Delaware Department of Education (DDOE)	Provides information and weblinks to best practices and other resources to assist Delaware public schools in their efforts to provide every student with a safe, secure and supportive learning environment.	<a href="https://www.doe.k12.de.us/domain/470">https://www.doe.k12.de.us/domain/470</a>
School Climate and Discipline - Best Practices, DDOE	Provides information on best practices in school climate and discipline, including links to resources and training on the trauma-informed compassionate schools model, character education, restorative practices, and teaching tolerance.	<a href="https://www.doe.k12.de.us/Page/3313">https://www.doe.k12.de.us/Page/3313</a>
School Climate and Discipline - Bullying, DDOE	Provides information and weblinks to district bullying prevention policies, frequently asked questions (FAQs), reporting forms, laws and regulations, and resources and training materials.	<a href="https://www.doe.k12.de.us/Page/3311">https://www.doe.k12.de.us/Page/3311</a>
School Climate and Discipline - School Safety, DDOE	Provides an overview of the Comprehensive School Safety Program and links resources, training, reports, forms, and laws and regulations related to school safety.	<a href="https://www.doe.k12.de.us/Page/3314">https://www.doe.k12.de.us/Page/3314</a>

Title	Description	Website address (if applicable)
School Climate and Discipline - Student Conduct and Discipline, DDOE	Provides information and weblinks to district codes of conduct, frequently asked questions (FAQs), reporting forms, laws and regulations, and resources and training materials.	<a href="https://www.doe.k12.de.us/Page/3312">https://www.doe.k12.de.us/Page/3312</a>
Social, Emotional and Behavioral Wellbeing, DDOE	Features resources addressing the provision of academic and behavioral supports to assure that all students and school communities are protected, connected and respected.	<a href="https://www.doe.k12.de.us/domain/616">https://www.doe.k12.de.us/domain/616</a>
<b>Documents</b>		
Delaware Model Policy for Bully Prevention and Cyberbullying (updated May 2017), DDOE	Model policy addressing bullying prevention and cyberbullying.	<a href="https://www.doe.k12.de.us/cms/lib/DE01922744/Centricity/Domain/325/Bully%20Prev%20Cyber%20Bullying%20Model%20PolicyTemplate%202017%20Final%20Website.docx">https://www.doe.k12.de.us/cms/lib/DE01922744/Centricity/Domain/325/Bully%20Prev%20Cyber%20Bullying%20Model%20PolicyTemplate%202017%20Final%20Website.docx</a>
Delaware Social and Emotional Learning (SEL) Competencies, DDOE	Guidance document detailing standards, guidance, and other policies and practices that promote school-family-community partnerships to promote SEL and integrate SEL into academic content areas.	<a href="https://www.constantcontact.com/2232a4dc-bff3-407b-88f0-08fd305cbba7.pdf">2232a4dc-bff3-407b-88f0-08fd305cbba7.pdf (constantcontact.com)</a>
Trauma-Informed Practices and Social Emotional Learning Strategic Plan (2019), DDOE	Comprehensive plan supporting the promotion and integration of trauma-informed practices, social emotional wellness, and physical wellness throughout the public education system.	<a href="https://www.doe.k12.de.us/cms/lib/DE01922744/Centricity/Domain/616/TIP-SEL%20Strategic%20Plan.pdf">https://www.doe.k12.de.us/cms/lib/DE01922744/Centricity/Domain/616/TIP-SEL%20Strategic%20Plan.pdf</a>
<b>Other Resources</b>		
Statewide Support Report School Discipline Improvement, 2019-20, DDOE	Statewide annual report fulfilling requirements outlined in 14 Del.C., Ch. 7, §703, directing the Delaware Department of Education to collect, evaluate and communicate data related to the use of exclusionary disciplinary practices in Delaware public schools and the efforts undertaken to reduce those occurrences.	<a href="https://www.doe.k12.de.us/cms/lib/DE01922744/Centricity/Domain/470/SDIP%202020%20Final%20corrected.pdf">https://www.doe.k12.de.us/cms/lib/DE01922744/Centricity/Domain/470/SDIP%202020%20Final%20corrected.pdf</a>
2019-20 Annual Report Use of Physical Restraint in Delaware Public School Districts and Charter Schools, DDOE	Statewide annual report summarizing data number and types of incidents of restraint occurring among different student populations statewide.	<a href="https://www.doe.k12.de.us/cms/lib/DE01922744/Centricity/Domain/470/FINAL%202019%2020%20PR%20Report.pdf">https://www.doe.k12.de.us/cms/lib/DE01922744/Centricity/Domain/470/FINAL%202019%2020%20PR%20Report.pdf</a>

Title	Description	Website address (if applicable)
Delaware Report Card, DDOE	Education data dashboard with searchable district and school report cards presenting data on range of educational indicators including enrollment, attendance, and student behavior (i.e., expulsions, in-school and out-of-school suspension and incidents of violence).	<a href="https://reportcard.doe.k12.de.us/">https://reportcard.doe.k12.de.us/</a>
Due Process Calculator Worksheet, DDOE	Tool designed to assist school administrators in meeting required building- and district-level due process requirements.	<a href="https://view.officeapps.live.com/opp/view.aspx?src=https%3A%2F%2Fwww.doe.k12.de.us%2Fcms%2Flib%2FDE01922744%2FCentricity%2FDomain%2F470%2Fdue%2520process%2520timeline%2520calculator.xlsx&amp;wdOrigin=BROWSSELINK">https://view.officeapps.live.com/opp/view.aspx?src=https%3A%2F%2Fwww.doe.k12.de.us%2Fcms%2Flib%2FDE01922744%2FCentricity%2FDomain%2F470%2Fdue%2520process%2520timeline%2520calculator.xlsx&amp;wdOrigin=BROWSSELINK</a>
Trauma-informed Compassionate Schools Model Best Practices Resources/Training, DDOE	Best practices resources and training materials focusing on the Trauma-informed Compassionate Schools Model, Character Education, Restorative Practices, and Teaching Tolerance.	<a href="https://www.doe.k12.de.us/site/Default.aspx?PageID=3356">https://www.doe.k12.de.us/site/Default.aspx?PageID=3356</a>
School Climate and Discipline Non-Academic Mandatory Training, DDOE	Mandatory training curricula required under Delaware law and DDOE regulation for school personnel related to school climate & discipline programming: <ul style="list-style-type: none"> <li>• Bullying Prevention</li> <li>• Gang Identification</li> <li>• Child Abuse Reporting</li> <li>• Restraint Reporting</li> <li>• Teen Dating Violence</li> </ul>	<a href="https://www.doe.k12.de.us/Page/3324">https://www.doe.k12.de.us/Page/3324</a>
Using Delaware School Climate Survey Data	Tools and resource materials supporting the use of school climate survey data, including links to online reports, steps for interpreting school reports, and templates for sharing data.	<a href="http://www.delawarepbs.org/school-climate/use-of-school-climate-data/">http://www.delawarepbs.org/school-climate/use-of-school-climate-data/</a>